

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1933

UNITED STATES OF AMERICA,
Appellant,

v.

CITIZENS AND SOUTHERN NATIONAL BANK, et al.

On Appeal from the United States District Court for the
Northern District of Georgia

JOINT APPENDIX

INDEX

VOLUME I

	Page
Relevant Docket Entries	1
Complaint by the United States Filed November 2, 1971	9

Answer to Complaint Filed by the Defendants May 5, 1972	24
---	----

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia Commencing September 25, 1972:

Appearances [2]	45
Testimony of W. D. Padgett—	
Direct examination [7]	49
Cross-examination [74]	89
Testimony of William Farr, III—	
Direct examination [85]	96
Cross-examination [123]	118
Testimony of Herbert Leonard Megar—	
Direct examination [151]	135
Cross-examination [161]	142
Redirect examination [171]	148

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 26, 1972:

Testimony of James A. Parker—	
Direct examination [180]	151
Cross-examination [227]	178
Redirect examination [245]	188
Testimony of Charles B. Ginden—	
Direct examination [256]	195
Cross-examination [296]	219
Redirect examination [309]	226
Testimony of Warren Jackson—	
Direct examination [312]	228
Cross-examination [352]	251

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 27, 1972:

Testimony of Warren Woolsey—

Direct examination [361]	257
Cross-examination [408]	284
Redirect examination [424]	292

Testimony of Samuel L. Skogstad—

Direct examination [425]	293
Cross-examination [426]	294
Redirect examination [476]	322
Recross-examination [494]	333

VOLUME II

Testimony of Mills B. Lane—

Direct examination [508]	343
Cross-examination [539]	361
Redirect examination [562]	374

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 28, 1972:

Testimony of Howard S. Starks—

Direct examination [582]	386
Cross-examination [604]	400
Redirect examination [633]	417

Testimony of Joseph Hall—

Direct examination [637]	420
Cross-examination [683]	445
Redirect examination [744]	481

Testimony of Robert Daniel Handley, Jr.—

Direct examination [747]	483
Cross-examination [765]	494
Redirect examination [774]	499
Recross-examination [774]	500

**Transcript of Proceedings Held Before the Hon. Charles
A. Moye, Jr., United States District Judge for the North-
ern District of Georgia commencing September 29,
1972:**

Testimony of Warren L. Berry—

Direct examination [777]	501
Cross-examination [784]	505
Redirect examination [802]	516

Testimony of Roy B. Holland—

Direct examination [802]	517
Cross-examination [805]	519

Testimony of Hubert Harris—

Direct examination [808]	521
Cross-examination [812]	523

Testimony of Lewis C. Beasley—

Direct examination [815]	524
Cross-examination [821]	528

Testimony of Joseph M. Ream—

Direct examination [824]	530
--------------------------------	-----

Testimony of Henry T. Collingsworth, Jr.—

Direct examination [830]	534
Cross-examination [837]	538

Testimony of Gordon B. Trulock, Jr.—

Direct examination [842]	542
Cross-examination [853]	548

Testimony of Ben C. Cook—	
Direct examination [854]	548
Cross-examination [859]	552
Testimony of Merrill Autry, Jr.—	
Direct examination [862]	554
Cross-examination [865]	555
Testimony of L. R. Gellerstedt, Jr.—	
Direct examination [873]	559
Cross-examination [881]	564
Testimony of King Cleveland—	
Direct examination [888]	569
Cross-examination [892]	571
Testimony of W. M. Jackson—	
Direct examination [895]	573
Cross-examination [905]	579
Testimony of Evans Bruner—	
Direct examination [932]	594
Cross-examination [940]	599

VOLUME III

Testimony of J. Mack Robinson—	
Direct examination [942]	601
Cross-examination [946]	603
Testimony of Walter Eaves—	
Direct examination [953]	607
Cross-examination [956]	609
Testimony of E. D. Dunn—	
Direct examination [960]	611
Testimony of Nevins Dennis Baxter—	
Direct examination [974]	619
Cross-examination [1004]	636

Depositions:

Warren Lanham Berry— (GX-198)	671
Dr. William M. Cason— (GX-199) 4.1-6.13	739
Gus Lockett Connelly— (GX-200) 4-29.3; 53.13-54.22	741
Thomas E. Cook— (GX-201) 4-26.4	760
Edward E. Elson— (GX-202) 10.23-12.7	774
Louis J. Fortuna— (GX-204) 19.6-22.3	775
Hubert L. Harris— (GX-206) 4-28.7	778
T. Robert Hazelrig— (GX-207) 4-28.13	793
Dr. W. Andrew Irvin— (GX-208) 12.4-12.21; 18.10-18.24	811
Hugh F. Lane— (GX-209)	812
Alva G. Maxwell— (GX-211) 4-6.13	848
Dalton F. Scott— (GX-215) 34.24-36.3	851

Economic Report (Excerpts):

Volume 1—[5-14] [83-84] [114 "E"-130 "B"] [139-147]	852
Volume 2—Exhibits 20, 28, 29, 53, 54, 55, 69	877

Government Exhibits:

GX-33 B	E-1
GX-33 C	E-5
GX-33 D	E-7
GX-33 E	E-10
GX-35	E-13
GX-36	E-24
GX-37	E-28
GX-38	E-38
GX-104	E-57
GX-105	E-89
GX-106 A	E-113
GX-107	E-121
GX-108	E-122
GX-109	E-123
GX-110	E-124
GX-111	E-125
GX-112	E-126
GX-113	E-127
GX-114	E-128
GX-115	E-132
GX-116	E-133
GX-117	E-134
GX-118	E-135
GX-119	E-137
GX-120	E-139

GX-121	E-140
GX-122	E-141
GX-123	E-142
GX-124	E-143
GX-125	E-145
GX-126	E-146
GX-127	E-147
GX-128	E-148
GX-134	E-153
GX-136	E-155
GX-138	E-156
GX-139	E-158
GX-140	E-160
GX-142	E-161
GX-148	E-162
GX-151	E-164
GX-153	E-165
GX-162	E-166
GX-163	E-172
GX-164	E-198
GX-166	E-204
GX-169	E-206
GX-170	E-215
GX-177 [1-15.6]	E-217
GX-177 B	E-232
GX-177 D	E-235

GX-188	E-240
GX-189	E-241
GX-190	E-242
GX-191	E-243
GX-192	E-249
GX-193 [1-6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 28] ...	E-251
GX-194	E-268
GX-216	E-269

Defendants' Exhibits:

DX-94	E-305
DX-113	E-329
DX-125	E-330
DX-152	E-331
DX-266	E-337
DX-267	E-460
DX-268	E-502-2
DX-269 (Sections A, D, F, K and V)	E-572
DX-270—Vol. I, GOG 9.27 and GOG 9.6	E-692
Vol. II, GOG 26.01 and 26.011	E-699
DX-277	E-703
DX-278	E-705
DX-300	E-706
DX-301	E-835
DX-302	E-840
DX-310	E-860

DX-311	E-1024
DX-313	E-1717
DX-316	E-1804
DX-317	E-1816
DX-318	E-1822
DX-320	E-1826

Notice of Appeal filed March 25, 1973	E-1841
Order Noting Probable Jurisdiction dated October 29, 1974	E-1842

MILLS B. LANE,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. Would you tell the reporter your full name, please, sir?

A. Mills B. Lane.

Q. Mr. Lane, what is your occupation today? A. I am vice-chairman of the Citizens & Southern National Bank.

Q. When did you become vice-chairman? A. July 8th, 1971.

Q. What was your position before that date? [509] A. I was president.

Q. And when did you become president? A. July 8th, 1946.

Q. What are your credentials, so far as the Citizens & Southern Holding Company is concerned? A. I am at present a director of the Holding Company. I was its president from '46 until Mr. Hall was made president, I think, in 1970.

[510] Q. Who is the current president of the Citizens and Southern Bank? A. Mr. Richard Kattel.

Q. And has been since July of 1970? A. '1.

Q. When did you come to Atlanta with the Citizens and Southern Bank? A. October, 1939.

Q. At that time, Mr. Lane, what was the competitive posture of banking in the Atlanta area? A. Atlanta had three banks that were domiciled here. Two of them had—one or two of them had banking in Decatur prior to the Banker Freeze of 1926. One had a branch in Buckhead which is also a grandfather bank. The C&S was a branch of Savannah with the competitors using that as heavily as they could, that they were just a branch of Savannah. We had two little branches, one on Mitch-

ell Street that is now a pawn shop, one at Tenth Street, that is now a nightclub. That was all we had with no opportunity for any increased facilities whatsoever.

Q. When did you become free to branch in Atlanta? A. We did not become free to branch in Atlanta through the C&S Banks until 1960.

Q. What did you do to expand in the meantime? A. We were fortunate in being able to acquire the [511] Bank of Atlanta which was a small bank, less than \$7 million, as I remember, with an office out on Bankhead Highway, just at Peachtree and Marietta, Bankhead Highway, and Little Five Points. The bank was in serious trouble and we, I think part of the characteristics of our bank has been it's ability through its Board of Directors to give management the leeway to make decisions without having to hold multi-committee meetings.

Another bank in Atlanta was trying to purchase the Bank of Atlanta, but it's interesting that the Directors of that bank accepted a lower cash offer per share from us than they were willing to hang around and go through the Board of Directors from an upcoming bank. That gave us through the holding company a vehicle for taking banking to the people.

Q. In Atlanta? A. In Atlanta.

Q. Did you ever get into Buckhead? A. We were, in 1950, a small bank had been started in Buckhead. The owners of that bank decided they wanted to get out of the banking business. The owners of the bank were more friendly to a competitor bank than they were to us, but again, we had the vision, I guess, and the audacity, if you want to call it that, or foresight to make an offer for the bank with no strings [512] attached to it. Although, the ownership of the bank was non-friendly to C&S, they sold us the bank.

Q. What is the plan of improvement as an historic fact? A. The plan of improvement which, I think, went through two elections before it was adopted incorporated the Buckhead area

into the City of Atlanta. The interesting thing about that, when I came to Atlanta we had, the way I looked at it, three banking capitols, Five Points, Decatur Square and West End. There was groupings of banks in those areas. When the plan of improvement went through, instead of there just being an office of C&S Bank of Atlanta and a branch of the Fulton, every bank in Atlanta went out with more than one branch starting with Buckhead Village going up Peachtree Street, branching out up Roswell Road and the plan, what happened was that within a period of three years after all the banks went there, the total banking deposits and resources in Buckhead were over a hundred million dollars, and it had made Buckhead a fourth financial capitol.

At a period where housing and real estate development and construction lending, we didn't have the major developers like Tom Cousins, the smaller corporations, individuals like Red Gerrin and others, but this putting together a pool of capital with branch management that [513] have authority to do, I'm sure, led to the area development of Buckhead and it began to spread right out as a concentric circle north, which is, of course, we had the development of Chamblee-Dunwoody as a result of the war with the bell bomber plants there.

Q. Did this cause the spreading out of the city limits? A. It had to.

Q. As far as banking is concerned? A. As far as banking in the City of Atlanta, it's in the same fix as the corporate City of Atlanta is. We have the metropolitan area hemmed in by unofficial legal boundaries and yet in the banking business the same thing is true in government, that the City of Atlanta now provides all the policemen for the whole county. The small police force of Fulton County was inadequate. The same is true of banking. Atlanta, in the post war years, has become the major financial center of the entire southeast. It's both in national new business, of the reputation and character of the major banks of this town, has meant that the citizenry, both small and large, this town

brags about being big. One of the newspaper reporters said last week, I believe Atlanta believes its advertising. People want to do business with the big banks. We felt that way and that's what was needed and was necessary.

[514] Q. How did, if I may use the shorthand, your five percentor or correspondent's associate program come about? A. It came about when a group in Sandy Springs, where two banks, independent charters had been turned down by the State Banking Department. Jim Aldredge was a close friend. He was at that time, I think, Chairman of the County Commission. He had a building supply in Sandy Springs, and I'm sure that he had seen the, really, the renaissance of Buckhead as the result of being a financial capitol. What it had done. He came to me and said, "Sandy Springs is growing, it's the new section of town, it's going to, it needs banking, and I want to urge you to go take a look at Sandy Springs as it is, see what you think it is going to be in the future. We need a bank."

Q. What did you find? A. We found that Sandy Springs was indeed beginning to overflow. We had our bank at Buckhead, the people in Sandy Springs had to either come to Buckhead or go to Roswell to do any banking business at all and the convenience was absolutely a necessity. We saw that a bank would not only support them but would grow. The interesting thing about opening new branches is that you can put a bank in a location where there has never been a bank and [515] money seems to come up out of the ground. People that have never had a bank account before all of a sudden money comes out of shoeboxes or somewhere, I don't know.

But, you start a bank or a branch and resources begin to grow. We knew when looking at what had happened to Buckhead that obviously the City of Atlanta was either going to have to expand or certainly the banking laws in the State of Georgia were going to have to be changed.

Ever since I have been in the banking business there's been some action every year to try to do something to liberalize the

tight laws that hindered banking from taking business to the people.

Q. Taking business to the people? A. Yes, going where people are, just like the neighborhood theatres or anything else. People didn't want to come downtown, they wanted to bank, they wanted convenience, they wanted to have a friend in the bank, too. It was with the knowledge that either the banking laws were going to be changed or Sandy Springs would come into the city that we organized that bank. We picked up a group of people, some from Sandy Springs, some who were just friends of ours, new to C&S Bank, and organized the bank providing it with a manager, a president for whom we financed a considerable purchase of stock. We sold stock to our friends and in the area combining a degree of [516] ownership that tied it to the Citizens and Southern, but with a sufficiency of local interest to make this at one and the same time an integral part of Citizens and Southern, what it was doing as well as having a local flavor that's bragged about so much by independent banks.

[517] A. (Continued) At that time we didn't have the courage to give the bank the name Citizens & Southern, but we picked the closest thing to it, Citizens National Bank of Sandy Springs. And when we put the big sign up there, we featured C for Citizens, and S for Sandy Springs, and from a distance of a mile, you would think the sign was Citizens & Southern, and not the Citizens National of Sandy Springs.

Q. I presume the shareholders and directors didn't object to this? A. No, sir, I think we all enjoyed the fact that we came as close as Mr. Fortuna did of putting C&S up there as we could at that time.

Q. What understanding was there, if any, with respect to the Citizens & Southern Bank and Holding Company furnishing management to lead this bank? A. Have to give me that again.

Q. What understanding was there, if any? A. Oh, we irrevocably said that we would provide the management, the direction and the supervision of the bank. After all, the directors of the bank had never been directors for any bank before. It was not a business they knew. They had value; they knew the bank was going to need a gentleman like Aldredge in helping direct business to the bank, in giving a new president local knowledge about credit and people doing [518] business with it, but it was a learning process for directors of a bank. It is a right interesting thing that when you organize a brand new bank, the directors have a feeling of pride and interest that is amazing. They want to learn; they want to help build the bank. When a bank has been in business fifty years, the directors pay very little attention to it, I am afraid. But, directors of a new bank have burning desire to see it succeed.

Q. Did you furnish this management? A. Yes, we did.

Q. At Sandy Springs? A. Yes, we did.

Q. Who did you furnish? A. We supplied a young man by the name of Tom Cook, whose father was a banker in Cochran, Georgia, and whose brother was working for his father, and the young man had worked for us here in Atlanta for several years.

Q. Did Mr. Cook remain president of that bank to date? A. No, he did not. Mr. Cook, unfortunately, did not have good credit judgment. We, ourselves, this being the first bank we had a five-percent interest in, did not have a director on the board, other than from [519] our law firm. We did not have the techniques of branch supervision that we have now, with a result that with a board of directors that were not really knowledgeable, we woke up one day, the supervising authorities, and found that the bank was in serious trouble.

Q. What did you do? A. We promptly saw that—recommended to the board that Mr. Cook be relieved, and recommended Mr. Lou Fortuna, a Dartmouth graduate, a man who

had both real estate lending and installment lending in the C&S Bank, as well as having helped collect bad loans several times, while a Yale man doesn't like to stomach a Dartmouth graduate, they, having beaten our team while I was in college, Lou Fortuna was elected to be president and has been president ever since.

Q. The board elected him? A. Yes.

Q. Did the board look anywhere else for a president? A. No, sir.

Q. Did the board expect you to find a president and produce him? A. Yes, sir. And to show you the extent of our feeling that this was a C&S Bank, we promptly bolstered the bank's capital by the purchase of \$100,000 worth of [520] capital notes.

Q. Were the regulatory agencies aware of the relationship that was formed here between yourself and the Citizens & Southern Sandy Springs bank? A. I feel absolutely positive that, two charters having been declined by independent groups, that only the name Citizens & Southern, our participation in the bank, the knowledge of our style of banking, made possible the granting of a charter in the first place.

Q. Was this a national association charter? A. Yes, sir.

Q. So, from that you are testifying that, at least, the office of the controller of the currency and his then chief national bank examiner were aware of it? A. I am sure that the State Banking Department was aware of it, too, because all applications for banks are circulated among all supervisory agencies.

Q. Would you say you exercised any influence over the management and policies of this bank or not? A. You talking about the Citizens & Southern National Bank or me, individually?

Q. The Citizens & Southern National Bank and Holding Company. A. As though it were a branch office.

Q. Did you so influence it as to tell the board [521] members exactly how to vote? A. No, sir.

Q. Well, then, how do you equate those two? How do you reconcile them when you say that you treated them like a branch but they made the decisions? A. They had their legal responsibilities, which they have very great feeling in. They were looking to us for guidance, advice and suggestions upon which to act. Certainly the past history of Citizens & Southern, since its beginning, had demonstrated both in depression years and in good years, the style that had been developed, that it was deemed toward helping other people before you help yourself, and that led them, I am sure, to looking to us for advice and guidance which, in the past, have been sound. They had seen us replace a president who did not measure up. They looked to us for that, but as far as legal control is concerned, no.

Q. Moving, Mr. Lane, if we may, to Chamblee, what was it like out there in 1960? A. Chamblee was a strip city, we call it, with the railroad on one side and a group of stores and offices on the other, and a little bit on the other side of the railroad tracks. But Chamblee was in an area that was industrialized with the building after the war of the Chamblee-Dunwoody whole industrial [522] development, which, in turn, had been brought about because of the building of the BPO Automobile Plant and the opening up of Peachtree Boulevard. And it was in, I would say, just a lag of a year or so, you go from Buckhead to Sandy Springs to Chamblee. It is nothing but an ever-widening circle of economy of metropolitan Atlanta.

Q. To the extent, recognizing the fact that you were then the chief executive officer of the National Bank and of the Holding Company, and not, therefore, always involved in each of the details of these, to the extent that you participated and have personal knowledge, Mr. Lane, please tell the Court how this bank got started, the Citizens &—the bank that is now the Citizens & Southern Chamblee Bank. A. The business people

of Chamblee, two senior citizens, Mr. Frank Berry, and then Mrs. Miller, who is now Mrs. Berry, together with a doctor and other people, were meeting together talking about the organization of a bank. Mr. Berry, like Mr. Aldredge and others in Buckhead, was in the real estate business. He saw what had happened, I am sure, in Buckhead and in Sandy Springs, that there was no convenient place for people to bank in the first place, but, second, that if you had a bank with capital and deposits and with adequate [523] management tied to downtown Atlanta, that it would be the greatest single asset that Chamblee could have.

When I heard about that, I got in touch either with Dr. Mosher or with Mr. Berry, and I believe that I said, "Look, you people want to start a bank. We are a retail bank; we know more about branch supervision of big banks and small banks than anybody else. We are not blue stocking; would you let me have an opportunity to meet with you and tell you what I think the Citizens & Southern can mean to you, who will organize it for the bank itself, for its management and for the future of the community."

And they were kind enough to let me have them out for supper or lunch at Peachtree Golf Club, and later we used to meet at the dog and cat hospital. And out of that came a bond of friendship and understanding that led to their saying we would rather join hands than anybody we know in the banking business, because we like your style; we like you as an individual; we like what your bank has stood for, and you can do more for this community than anybody else.

Q. In each of these two cases, did you participate in the selection of people who would organize and then be directors of the banks? A. I did, but the selection of the directors in [524] this case was the work of the organizing group that let us join hands with them. We did supply the president and key personnel to the bank, although Mrs. Miller, who became an officer of the bank herself, again, did the same thing that hap-

pened in Buckhead and Chamblee, in Sandy Springs, tying together the capacity and knowledge of a big bank with local interest and feeling for the community. That combination is what has spelled success.

Q. Did the people at Chamblee have the same expectation with respect to management that you have testified about with respect to Sandy Springs? A. Yes. And I would think that they would not have participated or asked us to share in the organization of the bank if that hadn't been a requirement.

Q. In each of these instances, was there any expectation—well, let me come back and ask a prior question.

You testified a little earlier, Mr. Lane, that unless the city limits expanded or the branch-banking laws were liberalized—

A. Right.

Q. —there was no way to go directly out into these areas either by branching or by holding company expansion? [525]

A. Absolutely.

Q. Were the city limits ever expanded? A. Not since the plan of improvement that I know of.

Q. And were the branch banking laws liberalized? A. Yes, they were.

Q. When? A. 1960—no, 19—countywide branch banking was passed in the legislature in 1971 to become effective a year later, in '72.

Q. If I may, Your Honor, I believe it was one year prior to that, the law was a '70 law, effective January 1, '71. A. Right.

Q. After the F.D.I.C. took a while with the application, remember? A. Right.

Q. Now, with respect to each of these two banks, was there or not any expectation that should either the city limits expand

or the branch-banking laws be liberalized so as to allow these separate banks to become branches? A. I believe——

Q. That such would take place? A. I believe that in both cases the presumption [526] at the time of organization was that if there ever became an opportunity to put these two banks together, it would be done.

[527] Q. Now, Mr. Lane, though the Citizens and Southern Bank at Tucker is not a part of this litigation with respect to merging, it nevertheless is a part of the whole litigation and I'd like for you to tell the Court what it was like out in Tucker in 1965 when we first went in there. A. In 1965, Tucker was a totally undeveloped little patch with a railroad running through it and the old Lawrenceville Highway connecting up with Lilburn and a spur road that went over Stone Mountain. The only industrial plant of any consequence was a small operation by DuPont. The Cofer family dominated Tucker and had for many years in the real estate, mercantile business and a very large building supply business.

The Cofers, when Tucker was very small, had organized a bank partly for the convenience of the people but more pertinently to be able to finance the homes and construction as an adjunct to the building trade business. The bank was in a building not as large as this courtroom. They had no male employee except Mr. Cofer, who had a little office in the back and he would go over in the afternoon in the back and do a little bit of business.

Mr. Cofer and I got to be very close friends. He moved his correspondent relationship from another bank to ours and he came to me and says, "I am old, I don't [528] understand modern banking, I haven't got a man in this bank. My sons are in the mercantile business. I've watched what you all have done; you all would be good for this community. I'd like to make an offer to you and your friends to buy a majority of our interest in this bank and to provide management and new life to it." And that was done.

And here was the beginning of the real meaning of the five percent bank. Charlie Thwaite, then president of Georgia Bank or Georgia Bank hearing over here at the capitol, had chided me that he thought we were wrong putting a five percent in a bank that other people owned ninety-five percent of and yet being its sponsor and its father with five percent ownership. We were going to be responsible for a hundred percent assets of the bank. And Sandy Springs—Mr. Thwaite proved out to be correct because we did not only have to, but wanted to back up one hundred percent of deposits liabilities of that bank. Mr. Cofer, the first thing he wanted to do was build a new building. We made him chairman of the building committee. We found it was going to cost \$1,700 for a sign and he called me up and said the building committee isn't going to approve this sign unless you put C&S's name on it. I said, well, if you want to. He said, we want representation in this community, and I said, what you want is what [529] I want. And that was the beginning of the use of the name of Citizens & Southern which led to the changing of the name of the other five percenter banks not only in Atlanta but around the State of Georgia as well.

Q. Mr. Lane, why would you give your name which we lawyers represent holding out of your goodwill and take only five percent of a voting share of a bank and still be a hundred percent responsible, as you put it? A. We don't mind accepting responsibility of the banking business because our belief is—this goes back to the beginning of this bank—that you have got to serve people, you've got to serve them right. Obviously something was going to change in the banking laws of the state someday, they had to either by liberalizing the holding company or branch banking. We knew that if we gave it our name now that it would be our name then. Then we would have, not at that time the claim, but we would have built the bank in the beginning for what it was going to be in the future.

Q. You said a while ago that you were taking a substantial percentage of the stock in Tucker, but that the holding company

had only five percent. What happened to the rest of it? A. It was divided mainly among officers, their wives, and close friends of the Citizens and Southern.

[530] Q. Why was this done? A. To insure that the ownership would be in friendly hands for the future and for the purpose of helping some people make some money.

Q. Did you have any control over those voting shares? A. Not one iota, or in the buying or selling stock after the original placement either.

Q. Did you personally have anything to do with the beginning of Park National, Citizens and Southern Park National out at Executive Park? A. Yes, that was again a major development in the economy of Atlanta. That was the first office park building with major companies, national companies moving from downtown to the periphery of the city, and it seemed obvious that that was going to be a continuing trend throughout metropolitan Atlanta. It had been brought on by the expressway system and then by the circumferential highway and we wanted to be in Executive Park for that reason.

From there on I had little to do with the selection of management. But, other than set the pace that this was a long-range objective and the first step, this was the first time that a major company, Sinclair, moved from Fulton National Bank Building downtown to [531] Executive Park as its prime tenant and we were its prime bank.

Q. What is your recollection of your participation in the formation of Citizens and Southern North Fulton Bank out at Roswell? A. I had practically nothing to do with that. By then we had, had permission to merge our bank at Belvedere. It seemed obvious that the trend among banks was for liberalization of branch banking that was to come, that we were then embarked on meeting the competition of other banks. By then the First National Bank of Atlanta had gotten friends of theirs

to organize a bank not far from the Citizens and Southern South DeKalb.

Q. North Fulton? A. Roswell, now. I got the wrong one. I thought you were back down—I was down at the wrong place. Roswell had always interested me because of the presence of our director, Mr. William D. Ellis, who had had a mill out there. There was a bank there owned by Mr. Simms Garrett, who also owned a bank at Alpharetta. Mr. Garrett had been in bad health. He was active in politics. He did not live, I don't believe, in Roswell, and he approached me asking me if I would like to purchase the bank at Roswell and Alpharetta, and we came to an agreement to under which he would sell Citizens and Southern five [532] percent and I was to place the rest. That was in the form of a written contract. When the time came to deliver, Mr. Simms Garrett wanted to renegotiate the terms of the contract. I refused to do that. The Superintendent of Banks begged me to. He said Mr. Garrett was sick, he ought to be out of the banking business. Roswell needed a Citizens and Southern, Alpharetta needed a Citizens and Southern. He urged me to renegotiate the contract with Mr. Garrett, which I refused to do.

Subsequent to that, Mr. Garrett sold the bank to someone else and in the same vein that we had gone from Sandy Springs to Chamblee, we applied for a charter with friends for a new bank in Roswell which has again shown that when you start a new bank, competition doesn't hurt.

Simms Garrett's bank has grown, the Bank of North Fulton is now about a \$7 million bank, plus. It has grown, it was probably unusual that the bank at Roswell was in the black within six months.

Q. Now, tell us about South DeKalb. A. Well, you want me to repeat it all?

Q. You can pick up where you left off, for better or not. A. I must be getting senile, I can't remember. But, I turned over to

Dan Handley, who was then the [533] aggressive vice president in charge of branches and five percent banks, and left it entirely up to him, as I have since the change in branch banking laws, the location of all new branch locations. From there on out, I had nothing further to do with South DeKalb.

Q. Are you familiar with the fact that the Government's assertion in this complaint that these are not Citizens and Southern Banks, do you differ with that view? A. They're as much Citizen and Southern Banks in every way, with only one exception. We only have a five percent degree of ownership.

Q. And this is true from the beginning as to each of them?
A. Yes.

Q. I suppose then you would resist the Government's assertion that they were vigorous and significant competition to the Citizens and Southern National Bank Emory and East Point?

A. There is no competition between the two. As a matter of fact, as Sandy Springs, Roswell came into being we urged customers of C&S to move for convenience to those banks, including major national corporations.

Q. Have you had any experiences that you can advise the Court of which would lead you to believe that [534] competitors feel that they are not C&S Banks or are Citizens and Southern Banks, these five? A. I feel positive that as far as competitors are concerned that they consider themselves absolutely the Citizens and Southern National Bank, and I'm sure if this case hadn't properly displayed it, they couldn't identify which ones were the five percent banks.

[534-A] Q. Mr. Lane, there is a bank that has been talked about in this litigation, which was the Stone Mountain Bank, and later the Citizens & Southern Bank at Stone Mountain, and now I believe it is the Citizens Bank of DeKalb. How do you compare that bank with these five, and its relationship and their relationships to the Citizens & Southern National Bank?

A. Let's go back to the organization of the Stone Mountain

Bank. I had developed, since I was twelve years old and my father took me out to see Gutson Paulson working on the mountain, a love for that rock. And I undertook, over a period of several years, to get the Venable family together. Nobody had ever been able to do it, and finally the Venables incorporated the mountain, put it in a voting trust; made me the sole voting trustee, and from that, although we didn't—weren't able to develop it as a private thing, later sold it to the State. The love of that mountain and the city of Stone Mountain was such that I became very friendly with lots of the leading citizens of Stone Mountain. There was a rapport between us because of what we had done for the rock. Stone Mountain had once had a bank that went broke; it went broke because the character of the people in Stone Mountain is as different as day and night from any other part of the state of [535] Georgia. It was founded by Scotchmen and Welshmen who were stone cutters.

The bank failed because individual credit in the city of Stone Mountain had never been any good. Nobody had any confidence in it, and yet the little merchants said, "We need a bank." And I met with them at the Plantation House, gave every one of them a brand new, sparkling Stone Mountain half-dollar, and from that came the organization of the bank at Stone Mountain. We had not gotten into the philosophy of the five-percent bank at that time; otherwise, it would have been organized, I think, in the same spirit that Chamblee, Sandy Springs and others were. They wanted an independent bank, and the five-percent interest had never occurred to me, but I said, "Look, we can't give you men out of the C&S Bank, but here is Arthur Drew, who is retired as an assistant cashier, and Arthur wants something to do. Maybe Arthur Drew would be interested in coming out here and buying a little bit of stock and being head of the bank. So this bank started with an entirely different embryonic stage. The character of the people of Stone Mountain, provincial. Stone Mountain was a sleepy little place. I don't think to this day it has been able to attract a chain grocery store, although they have had me working for

several years to try to [536] get them a Winn-Dixie. It is a little pocket of between Decatur, Lithonia, with a sense of pride that is unusual.

At the time the bank was operated, one of the problems of developing the mountain was that the entire sewage system of Stone Mountain was an open cesspool. On the property that we had bought for the state park, it had no sewage system. It did not look like anything that was—other than as an adjunct to the development of Stone Mountain as a park, and the desire of a few people to have a bank, that it ever came into being. I have been amazed that it, too, developed deposits and profitability. The only similarity between this and the five-percent bank was that because we did not have an interest in the bank financially, did not have a member of the board of directors, did not really have a qualified president, the bank got in trouble. It got into serious credit trouble, and though we didn't have an interest in it, not five cents, when they got in trouble, because I had helped them organize it and kept them coming, I said, listen, we have got to get rid of Mr. Drew; we have got to have a president. All right, we can do it under these circumstances. We can either own five percent of the bank, so personnel can flow back and forth, and [537] you can occupy the same status, and that is what took place. We provided them with two men, Mr. Angus Parker, who was here, and Mr. Robert Maughon, who is now president of the bank.

Q. Previously you supplied Mr. Gibson, did you not? A. Mr. Gibson before that, too.

Q. How would you compare the relationship of the voluntary control, as we have called it, between those board members and officers and those of the other five banks and your bank? A. Now, give me that again.

Q. How do you compare the relationship of trust in asking for control and relying on it, as between those various boards of directors and yourself? A. I still don't understand.

Q. Well, let me go back, Mr. Lane, to your testimony about the dependence for expert advice that you testified about with respect to Chamblee. A. All right.

Q. And Sandy Springs. What was the relationship at Stone Mountain? Was it the same? A. Oh, no, entirely different.

Q. How do you compare them? A. Different as day and night. There is no [538] comparison. The only reason I think that the Stone Mountain directors were willing to let us own five percent was that is the only way they could get a C&S bank man that wanted to come out and run it. But they wanted to tell him what to do.

Q. And did so? A. Oh, yes.

Q. Consistently? A. Oh, yes, elected a chairman of the board without even telling us they were going to do it.

Q. Any other instances that you can, yourself, recall evidencing this mistrust? A. Probably only one, and I don't know that it is pertinent. We had suggested to the Keeper of the House that Mr. Hugh Jordan, a legislator in the General Assembly, be put on the bank's study commission for changes in the bank-branching law, and he was one of the few that voted in the committee against any liberalization of branch banking.

Q. Who was the dominant shareholder group at that bank? A. The McCurdy family.

Q. Did any of your employees or officers or shareholders, so far as you know, other than the Holding Company, own shares of stock in that bank, or friends? [539] A. I think that I may have owned fifty or sixty shares that came about a good deal after the organization of the bank. I am not sure how I got that little dab of stock. The only person connected with the C&S Bank that had any shares, Mr. Drew, owned five hundred, and he was already retired from the C&S Bank at this time.

Q. I suspect, Mr. Lane, with respect to any of these five things that we have been talking about, the shareholders or the

board members could walk away from the C&S Bank and Holding Company's name any time they wanted to, couldn't they?

A. Yes, sir.

Q. In your view, what is the likelihood of this happening?

A. I can't possibly conceive of it.

Mr. Hodgson: He is your witness, Mr. Kinkaid.

Mr. Kinkaid: Can we take a break, Your Honor?

The Court: All right. We will take a ten-minute recess.

(Whereupon a recess was had.)

Cross-Examination

By Mr. Kinkaid

[540] Q. Mr. Lane, basically, I would like just to see if we can sort of clarify a few points on which I am a little bit confused here. A. Certainly.

Q. As I recall, you indicated that there was some intent with respect to the sign that was used for the Sandy Springs bank to, I think as you pointed out, stress the C from Citizens and the S from Sandy Springs. I was wondering, was that reference made to the time when the Sandy Springs bank moved into its new building out there on Roswell Road? A. Yes, yes.

Q. You weren't at that point referring to the early days of Sandy Springs? A. No, no, when they moved into the new office building.

Q. All right, sir. In the early days before Sandy Springs was formed, I got the impression from what you said that Jim Aldredge came to see you alone; am I correct in that? I had always thought that there was a group of people out in the Sandy Springs area, including Mr. Aldredge, who were interested in forming a bank and came to you seeking assistance.

A. My memory is not clear on that. Jim Aldredge is the only one I remember.

[541] Q. There may well have been other people? A. There may well have been.

[542] Q. It may not be, you may not be able to completely remember then whether, when you said you picked the group, I can't remember your exact words with respect to the organization of Sandy Springs. I think you said something like, "We picked a group, provided management, sold some stock to friends." When you said we picked a group, what did you have in mind there? A. I had in mind that we had invited Mr. Ivan Allen, Jr., Mr. Lawrence Gellerstedt, Mr. Weinberg, all associated with our C&S Bank and friends to become founding directors. That is the group I refer to.

Q. When you say "we" there, would that be Mr. Aldredge and anyone else from the organization group that came to you, if you can recall? A. I really can't recall the logistics of it.

Q. I realize it's been a long time, I don't want to quibble with words thirteen years after the event. I have a little bit of problem with the statements you made that we provided management. Wouldn't it be more correct to say that you suggested to the directors at Sandy Springs, experienced officers that were to run the bank; wouldn't that be more correct than saying we provided management? A. I believe that you can use it both ways. We suggest the man to run it, when we are providing management [543] we are talking about all the back-up services, installment loan and all, management assistance.

Q. When you said management, I thought you mean the man that's representing management. A. No, we suggested the man we would like for them to look at to be for president. That has been true for all banks, all affiliates. Whenever a new man comes in, even in a branch city, we have never told an advisory board or bank that we, this is the man we want you to take, here's the man that we want you to look at.

Q. And whether or not that man actually becomes the president is up to the Board of Directors? A. Yes, sir.

Q. You mentioned a situation that developed with respect to Mr. Cook of credit judgment out of Sandy Springs. I believe you indicated that there came a time when you recommended to the Board that Mr. Cook leave and that Mr. Fortuna take his place. Do I recall you correctly? A. Yes, I think I'd better give you a little additional explanation of that. We did not have a Citizens and Southern man as a director of the bank at that time. The bad situation came to light as a result of routine bank examination and I recall that I recommended to Mr. Weinberg and the directors that Tommy Cook had not performed, and that I thought he ought to be replaced. They [544] didn't want to do it at first. They were very loyal to him. And it seems to me it was over a period of a month or longer or perhaps three months before I persuaded them that they ought to let Tom Cook go. They were very reluctant to do so.

Q. Well, doesn't the fact that there was no C&S man on the Board at Sandy Springs, and I believe that you also mentioned the branch supervision wasn't keeping an eye on Sandy Springs at that time, doesn't that indicate to you that up to that point in time there was a significant difference between the Sandy Springs Bank and C&S five percent picture that you have painted for yourself as to the five percent bank today?

A. Not Tom Cook because of this case we did pick the majority of the Board of Directors from people intimately associated with the Citizens and Southern Bank, including a member of our law firm. Only in credit judgment were we lacking in things we had done for this five percent bank. Everything else, mechanics, bookkeeping, machinery to run the bank, only in credit review were we shortcoming at Sandy Springs.

Q. Wasn't it true that in the organizational stage of Sandy Springs that the original small group of organizers in turn

went out and picked the rest of the directors themselves? Can you recall back thirteen years [545] ago on that? A. I believe that they were responsible for the selection of local directors without concurrence back and forth on either one of the two slates that we had. But after the original get together, Tom Cook, Mr. Aldredge and the rest of them put the bank together, the mechanics of it.

Q. I believe you mentioned that Citizens and Southern treated Sandy Springs like a branch, but the Board had legal responsibilities? Again, I apologize for not being able to quote your exact words. A. That's about it.

Q. Is that about it? Fine. What were the legal responsibilities that you had in mind in that stage? A. I don't think I want to be specific on that, but it would be the legal responsibility that any director has by law that is expected from a supervisory authority.

Q. Now, would that include the responsibility to make basic policy decisions for the bank? A. Yes, sir.

Q. I think you also indicated with respect to Sandy Springs, and this may have been true for the other thing, I think you also said this for Chamblee, basically, the directors at Sandy Springs were looking for Citizens and Southern advice and guidance. This, you indicated, was [546] an essential part of the relationship between Sandy Springs at that time and your bank; am I remembering you correctly in that regard? A. Yes. Let me get back a minute to the question of the broad decision of policy. Policy decision in any Citizens and Southern affiliate or five percenter is a matter of mutual confidence between one another and agreement. The actual physical carrying out in legal form by resolution and official action is done by the Board, the leading up to that in broad policy or other things. The second question is a matter not of supervision but of cooperative work in trust and confidence we have with one another, both at the directors' level and management level.

Q. Does that mean that basically the policies of one of these five percent banks is determined as a result of consultation between the management and directors of the five percent banks and the people representing the Citizens and Southern National? A. And the actual president of that bank, too?

Q. Yes, include him in it. Would that—would that procedure apply to all decisions of the five percent banks? A. I am not and have not been for quite a number of years in the daily management and relationship between [547] any of the five percent banks beyond the point of organization and policy that we try to give for the bank as a whole. I can't really answer that one specifically for you. I would if I could.

Q. From your standpoint, more or less in terms of what you were looking for? A. Right.

Q. At the time of organization, were you intending or expecting that that type of concurrence would take place with respect to such practices of the five percent banks as interest rates paid on savings accounts or service charges on deposit accounts? A. I never gave that any thought in my mind. Citizens and Southern with 115 locations or more, the executive officers that handle that do that, not me, so I wouldn't know that either.

Q. Executive officers are whom? A. I'm talking about Mr. Dan Handley and Mr. Joe Hall.

Q. Okay. Could we go back to this business of the advice and guidance. Could you spell out just a little bit more what you, the significance of the folks out at Sandy Springs looking to Citizens and Southern for advice and guidance was? A. All right, I think we can do that. Are you [548] going to put in a modernization loan program for underprivileged people; help do some property finance; or are you going to use the Citizens and Southern charge card; are you going to amend your pension and profit sharing funds and liberalize them as National Bank has done. Are you going to employ minority people in

the bank. That would be the type of things that I was referring to.

[549] Q. As I recall, you mentioned with respect to the stock in the Tucker bank that—I think Mr. Hodgson asked you about what happened to the bulk of the stock. A. Right.

Q. Outside the five percent that the Holding Company bought. As I recall, you indicated that was sold or distributed to friends of C&S, to ensure ownership in friendly hands. Now, again, I am probably getting your words all garbled up, so would you—— A. No, I think that is exactly what I said.

Q. Again, could you give us an idea of what you had in mind there so far as what is the significance of having the stock of Tucker in what you call friendly hands? In other words, what does that do for you with respect to the bank in Tucker? A. Let's go back to the selection of the—there were two ingredients that I mentioned in placing of the stock in Tucker, most of which was done by Mr. Hall and Mr. Bennett A. Brown, who was then vice-president in charge of correspondent banking. In that primary relationship we saw Tucker as probably one of the great growth areas of Atlanta, that this bank was going to have to have increased capital as time went by, that the price at which stock was sold, that it was going to be one of the most lucrative investments [550] anybody could make. And of course it has turned out that way. It is worth over ten times what was paid for it. I think that whenever you sell stock in any institution, where you are participating in it, that you want your stock in friendly hands. I wouldn't say that Tucker is any different than when we went out and got ten thousand new stockholders for the Citizens & Southern National Bank ten years ago. We sold them to our friends, because friends build things together.

Q. Does that situation have any connection in your mind to the voluntary control that you were discussing with Mr. Hodgson while ago? A. I don't think so.

Q. So far as you know or can recall, were the Chamblee and Sandy Springs banks identified to the public as C&S banks during the organizational stage and in the early years of their operation? A. Whether or not we did it consciously, I am not sure, but certainly with the presence of the Citizens & Southern people, it had to be common knowledge, certainly from the supervisory level on down, that we worked together. Now, whether we ran newspaper ads saying that or not, I don't know, but I would say it was common knowledge that it was a C&S-sponsored bank.

[551] Q. Well, I had in mind, by public, it was not the regulatory authorities but the general public that would be affected either by advertising— A. Well, the same thing, the same thing would be true.

Q. I am not sure if I understand you. Are you saying that the public was made aware of the relationship? A. I am sure the public was. Now, whether we consciously bought advertising in the newspapers to do it, I am not sure. I don't believe we did, but John Q. Public in metropolitan Atlanta, ever since we began developing retail banking, would almost bet that if anything was being done around town, it was the C&S Bank. Nobody else was active in the bullpen.

Q. You say C&S is the only bank that helps banks get started in communities where there are no banks? A. I am sure that up until that time there hadn't been a single move by another bank in Atlanta to do what we had been doing.

Q. Well, in terms of forming or helping a bank start, wasn't a bank—the formation of a new bank assisted by Trust Company in Chamblee at the same time? A. The Trust Company of Georgia acquired a bank [552] because it had been organized by Mr. Malcolm Bryant, who became ineligible—ineligible to own it when he became president of the Federal Reserve Bank of Atlanta. And he had to dispose of it to legally qualify. That is the way the Trust Company got started.

Q. Oh, excuse me, are you speaking of—I'm sorry. Are you speaking of Trust Company itself? A. Yes, sir.

Q. Oh, I am sorry. I misled you. A. Yeah, Trust Company.

Q. I was thinking of—— A. No, no, the Trust Company.

Q. I wasn't going back that far. No, I was thinking in terms of—I was asking you about the situation in Chamblee. A. Well, I think——

Q. The formation of the Peachtree Bank. A. Well, I think they were playing copycat.

Q. But it was at the same time that you folks had—— A. No, not at the time. They didn't organize the bank in Chamblee; we did.

Q. No, they didn't organize the Chamblee National Bank, right. A. I don't keep up with what the competitors do; [553] they don't do much.

Q. So far as the Stone Mountain situation is concerned, I sort of got the impression from what you were saying that the real difference, so far as your concern at Stone Mountain, from other associate banks, was the independence of the people who were making up, by and large, making up the board of directors. Is that a fair reading of your statements as to Stone Mountain? A. Partially. I think probably more important is that at the time the bank was organized, I did not spell out to the organizing directors what association with the Citizens & Southern could mean, why they would benefit if we organized the bank with a five-percent interest without being able to apply our young, aggressive management, and we were looking forward together, as we did in Chamblee and Sandy Springs; we are going to be lacking. That was my first chance; I was inexperienced, and we hadn't developed a philosophy or a policy at that time. That was a plaything, went with the rock.

[554] Q. And do you allow banks to use the Citizens and Southern name who are not part of the Citizens and Southern system? A. No, sir.

Q. Well, then, doesn't the fact that you allow Stone Mountain to use your name indicate that Stone Mountain is part of the system? A. When the other banks, five percent banks, were changing their name, we offered to the directors of that bank the privilege of changing the name if they thought it would enhance the growth and development of the bank. At first they were reluctant to do so and then realized it would be wheat in the bin and money in the till if they could draw the association closer together in the public's mind.

Q. I'm not sure if I—perhaps you didn't understand my question. Maybe I'm not understanding your answer. But, let's maybe back up a step. At that time, the time that Stone Mountain began using your name, in the subsequent years, wasn't Stone Mountain by virtue of that fact a part of the Citizens and Southern system? A. With the exception of personalities involved, yes.

Q. And here by that you mean the personalities on the Board of Directors? [555] A. And to some extent the officers of the bank as well.

Q. Mr. Lane, can you recall back, this would be back in April of '68, going up to Washington with, I think, it was Mr. Hall and Mr. Starkes and Mr. Fortuna and perhaps some other folks? A. Yes, sir.

Q. To meet with some of the staff members at the Reserve Board? A. Yes, sir.

Q. Can you recall at that time having discussions with the Board staff about the questions of control? Do you recall the issue of control? A. The entire purpose of the meeting was to discuss control, manner of control and how it evolved.

Q. As I recall, that hearing, and if you like, we could get into specific stages, but let's see if we could just get some broad items out. As I recall, the hearing, I got the impression that you had made it plain to the Reserve Board that Citizens and Southern did not have any control over its five percent banks? A. That is to say we had no control over the voting shares or the election of directors.

Q. In other words, that's what I was trying to clarify, but that was the context of your remarks? [556] A. Context with the Reserve Board hearing entirely with the question of legality and compliance with the Georgia statute. I guess with the Federal Reserve statute, too, sure, obviously.

Q. Can you give me a little bit more on what you mean when you indicate that the five percent banks or correspondent associates don't compete with Citizens and Southern National? Let me ask it a different way. By that are you indicating that they, the five percent banks, involved in this case, have the same competitive practices as Citizens and Southern National or have the same interest rate on savings accounts or service charges? Just what are you indicating in terms of there is no competition.

Mr. Hodgson: If Your Honor please, I ask that Mr. Kinkaid rephrase the question. I object to what he has asked because it has words of art in it to the extent that he is talking about competitive practices. I'd like for him to ask Mr. Lane, if he wishes, specific ones in serial, but not as a broad matter because Mr. Lane might not know what Mr. Kinkaid meant or what is on Your Honor's mind.

By Mr. Kinkaid

Q. We will try here again. A. All right.

Q. First of all, maybe I'd better establish that [557] I am recalling your direct testimony correctly, did you as a matter of fact have an occasion to indicate on direct testimony that the five percent banks don't compete with C&S National? A. No,

sir, you're exactly right. In fact, we have helped them get business for themselves.

Q. Okay. Then, what I'm trying to get at is when you say that they don't compete, does that mean that they have the same— A. They do not.

Q. —interest rates? A. It means they do not compete for business and the help for customers of the bank in services or otherwise.

Q. Perhaps I could ask it another way. This would help me. From your standpoint as a banker, how would they be—how would banks or how do banks compete for the customers that you have just indicated? A. You advertise, use the direct mail, you get on television, you go calling and say, "Give me your bank account, don't keep it where you've got it."

Q. Now, are you saying that someone from a correspondent associate would not call on a Citizens and Southern National customer and try and take the account away? [558] A. Yes, sir, they will do that for convenience, and we urge them to. In fact, we have helped build these banks by putting them in places that were more convenient to Citizens and Southern National Bank customers than places where they were banking with us before.

Q. Well, the idea of convenience suggests to me, for example, that this would mean only a Citizens and Southern National customer, for example, up in Sandy Springs would be closer to C&S Sandy Springs than it is to National. A. Right.

Q. Does it go beyond that that wouldn't Sandy Springs call on a Citizens and Southern National customer who was located closer in than where he would be just as convenient to a National office? A. I don't think so.

Q. Is there any particular reason for that? A. I don't know what calling they would do, to tell you the truth. We are speculating. I do not know.

Q. And am I right in recalling that when Sandy Springs and Chamblee were formed there, that most of the stockholders of those banks were unrelated to the Citizens and Southern? A. I do not know. I think the stockholders' list would show that. I just don't know.

[559] Q. What I had in mind was there was a statement that you made in that Federal hearing that we just mentioned, would you like a copy of this to take a look at for yourself? A. No, I don't.

Q. I will try to read it accurately. A. Okay.

Q. Incidentally, Your Honor, this is Government's Exhibit 177. I think it also has a defendant's number on it, too, but I don't see it.

Looks as though this starts on the top of page 118, Mr. Noble, one of the attorneys on the Federal staff, asked, "I mean is it true that someone has an ownership interest greater than the combined interest of Citizens and Southern and the president's?"

Now, your answer was, "That is true at Warner Robbins, it was true at Pelham." Then following your statement then Mr. Hall indicated that is true at Chamblee, it's true at Sandy Springs and true at Fayetteville.

Then, on page 119, you got into a discussion with the Federal attorneys about divorces following marriages and what not, and you made a remark that there are also some common-law brides, too, and at which one of the Federal attorneys noted which the law recognizes as being marriages some place and then Mr. Noble popped in [560] with the Chamblee National Bank, whereupon you said that "This is a bank where there was a group of citizens, there was no bank in the community, it was at the north end of Atlanta, and a group of citizens were being put together by a Trust Company of Georgia." Reading on, after you met with these folks from Chamblee Springs, you "probably have less affiliated interests

of any kind in that bank than in any of the five percenters that started. They organized the bank and I said, please, I am a better partner for you than the Trust Company." Does that sort of refresh—that was four years ago—your memory would be better than it is now. A. The organizing group—I think I said 'this a while ago when Mr. Hodgson was questioning me, I found out they were talking about organizing a bank themselves. I got a hold of them to try and sell them on Citizens and Southern. When I did that I found out they were talking with Trust Company of Georgia.

Q. Do you recall—is this right, the unrelated interest in Chamblee would be the unrelated stock and stockholders? In other words, there was a large proportion of the stock in Chamblee held by people unrelated? A. People we didn't know.

Q. Yes. A. I think that's probably so.

[561] Q. Does that sound reasonable to your memory at this point? A. I think so.

Mr. Kinkaid: Would you excuse me a moment, Your Honor?

Q. In view of the fact that as you seem to recall that there were a lot of people that held stock at Chamblee who were not affiliated or related to Citizens and Southern at that time, how would you characterize that in terms of Stone Mountain? It sounds to me like in those earlier days with a great many people having, being unrelated to Citizens and Southern, that the situation at Chamblee then would have been very similar to the situation at Sone Mountain that you described. A. Only in, different in one respect, that the organizing directors of Chamblee started their bank with the express interest of not only having the name Citizens and Southern, but being a part of Citizens and Southern. When the merger came to pass that was contemplated. That was not contemplated at Stone Mountain.

[562] Q. Did you just say that they contemplated having the Citizens & Southern name? A. No, they did not, because we hadn't—they hadn't changed the name yet but contemplated being a part of the Citizens & Southern.

Q. Okay. A. That was their—that is the way they started out. Stone Mountain just didn't start that way.

Q. We were just talking a minute ago about the competitive practices, interest on savings accounts and the like. Let's go back to that for one second. If a loan customer is rejected for a loan, let's say, by C&S Chamblee, now he is then looking for another bank to try to borrow. If he goes to a National branch or if he goes over to, say, C&S Tucker, would he automatically be rejected for a loan just because he had been rejected by Chamblee? A. I would like to answer that, but I don't have any part of that daily supervision.

Mr. Kinkaid: No further questions, Your Honor. Thank you, Mr. Lane.

A. Thank you, Mr. Kinkaid.

Redirect Examination

By Mr. Hodgson

Q. Mr. Lane, Mr. Kinkaid asked you some [563] questions about your verbs in providing management or recommending and so on. The fact is that you did supply and provide management to these banks, didn't you? A. Yes, sir.

Q. From the Citizens & Southern National Bank. A. Yes, sir.

Q. And when Mr. Kinkaid was asking you about ultimate legal corporate responsibility for making decisions, it is a fact that these boards and management did follow your advice, didn't they? A. Yes, sir.

Q. And in talking in terms of stock being in friendly hands, that doesn't hurt voluntary control, does it? A. No, sir.

Q. With respect to the Federal Reserve Board hearing in April of 1968, you did go into this entire relationship, did you not? A. Yes, sir.

Q. And there was a representative of the Anti-Trust Division of the Department of Justice there, was there not? A. Yes, sir.

Mr. Hodgson: No further questions, [564] Your Honor.

The Court: Let me ask you a couple of questions, if I may, Mr. Lane.

A. Yes, sir.

The Court: You were asked a question by both counsel that dealt with an area which, as I understand the defense, is critical to the defense. The concept, as I would articulate, would be that these five banks that are involved are five-percent banks.

A. Yes, sir.

The Court: The five-percent banks are a part of the C&S system, that there has been no competition between C&S and these banks in the past, and there is no likelihood of competition between the C&S and these banks in the future; therefore, if the merger is allowed and they become branches of the C&S Bank——

A. Uh-huh.

The Court: ——there will be no diminution of competition.

A. Right, yes, sir.

The Court: That is the argument, as I understand.

[565] A. Yes, sir.

The Court: Now, with that argument, it becomes important to know what difference does five-percent ownership make. Five percent is just five percent of the ownership of the stock in a small bank; now take two banks and maybe both correspondents of yours, I don't know, but which are identically located, and neither affiliated with another bank. What difference does it make to you that you have got five-percent ownership in one of them and you don't in the other?

A. I don't believe I understand that.

The Court: All right. Take two banks similarly situated, like Sandy Springs or any one of these.

A. Right.

The Court: And they are not affiliated with any other bank.

A. Right.

The Court: Does the five-percent stock ownership mean that much to the C&S that you would treat one differently from the other?

A. It binds the cheese together.

The Court: It is sort of a symbolical [566] situation, isn't it? It isn't a monetary situation?

A. No, but only through that we have the ability to transfer personnel without fringe-benefit changes, pension-to-pension plans.

The Court: How does it do that?

A. Well, if you go to work for the Citizens & Southern National Bank and we pick up your pension and you draw the C&S pension fund, and you move to Sandy Springs, you are still a member of the pension plan with past service going from the time you first went to work for the bank.

The Court: Why is that? Because the C&S pension plan is so written as to allow that?

A. No, the—yes, that the relationship between the five-percent bank and the National Bank permits movement of personnel as though it were a branch.

The Court: Is that a legal concept or one that the C&S had adopted, that it will so consider the five-percenter as a branch?

A. Judge, I don't know about the legality, but it is true that when Stone Mountain disassociated, the pension interchange came to an end. When we sold our interest in Brunswick, that came to an end. When we [567] sold in Pelham, that came to an end and did not continue. That is, as far as I know that that—well, I don't know but I would assume that our qualification for the instrument by the IRS is that this is all you have an ownership in and you can extend this to it. We don't have a so-called master plan.

The Court: All right. Well, let me go a step further with respect to the cooperation and the sponsorship and the responsibility of the C&S. Five percenters are still separate corporations?

A. Yes, sir.

The Court: Have you gone so far, for example, say, in the C&S in the Sandy Springs situation or any other place to have to bail them out of a financial loss, and, if so, how can you do it?

A. In the case of Sandy Springs, we put in capital notes to meet supervisory requirements. In the case of Tucker, we purchased convertible debentures to increase its capital.

The Court: But you made loans to them, in effect, which would have to be repaid?

A. In Tucker it is convertible into common stock. [568] In Stone Mountain, the additional capital is convertible into common stock. And I want to give you what you want; I am not trying to withhold anything.

The Court: No, I am trying to see how it is when you can say a five-percent bank is a C&S bank, and it will never change, and one which is identically situated except for that five-percent ownership that falls in a different category. What is the magic or the ecstasy of five-percent stock ownership, which may be simply a few thousand dollars, which I am sure means not very much to the C&S as a system, just that particular amount of stock?

A. Well, as I say, it binds the cheese. It gives us a contemplation of acquisition or merger; the willingness to allow it to use the name Citizens & Southern, to have all the merger——

The Court: You could do that to someone else, I take it, if the C&S wished to?

A. We would never do that.

The Court: What is in the five percent that makes you wish to?

A. Contemplation that we would be able to [569] acquire these banks down the road. If the law said your minimum is three percent, I think we would have taken three percent.

The Court: All right. Do you make any difference in classification among your five-percenters as among those that you expect to acquire down the road and those you don't?

A. Yes, sir.

The Court: And where did that differentiation take place?

A. It takes place where there is interest in the bank on one hand larger than ours that could become incompatible at some point in the future that is compatible today. We were once compatible with the Hands of Pelham. They owned the bank; we did not have the persuasive influence because it was a bank already in existence. It had not started with us as a new bank. The same thing is true in Fayetteville, where they rely on us, where they are operating just as much as they would a C&S

bank today, the same as the five percenter. But, its name is still the Farmers & Merchants Bank of Fayetteville, because the Redwine family own the bank. We are friends. The Redwines have been in court before on family squabbles, in [570] estate things that they have to settle. We don't have the same assurance with the Redwines, although they have got a C&S man down there, and young Redwine, who is the president of the bank, was trained in the C&S Bank.

The same is true at Hogansville. At Hogansville we have a five-percent interest. The Heinz family control the bank, fifty-one percent of it. He wanted us to have a five-percent interest so he could have the advantages of our helping him, but with never the contemplation that it would be a part of the Citizens & Southern in full.

I don't think the Redwines ever contemplate that even if we could go to Fayette County that they would like to be a branch of the Citizens & Southern.

The Court: Why do you own five percent in those banks? Why don't you just have——

A. I guess sometimes I made a career out of being misunderstood, but Old Man Kil Redwine came to me and asked me and asked me and said, "We would like to have your pension plan and we need your help," as a matter of fact. In Fayetteville's case, this was the only bank left in the state of Georgia that was not a member of the F.D.I.C. It had been a private bank, and I used to travel through [571] Fayetteville on the way to La Grange, where I was a director, and I would stop in and see the old man and sit around the hot-stuff stove, and I would tease him, say, "Why don't you make me chairman of the building committee? Let's build a new building. Let's join the F.D.I.C." And out of that came a personal friendship, and there came a day when Mr. Redwine, who at that time was banking with another bank and wanted to make a substantial loan of \$100,000, and he got turned down. And he came to

see me and said, "My brother, Charley, didn't like you all because you turned him down in the Depression, but I would like to have \$100,000." I said, "Sign right here." And from that came a personal friendship and his asking me to help him get the F.D.I.C. insurance, train his son, build them a new building, design it, which we did, purely a personal relationship and a desire to help Fayetteville. I am not always motivated by economic gain.

The same thing was true at Hogansville.

The Court: Well, let me ask you the question which perhaps may not even be answerable. We have heard, in cases of two other banks, similar attempts such as this, and following opposition, apparently there was a divestment of whatever stock ownership [572] there was.

A. Yeah, sure.

The Court: What are the economics or what is the situation with respect to these five banks that are under consideration if the Court is required to forecast, what is there——

A. Future?

The Court: Future, absent, approval? What is it as a continuance of a five-percent bank or a divestment, and why and wherefore?

A. Well, I think that is the most important question you can ask me. It would be a tragedy and a calamity, because we have never contemplated that that would ever come to pass. Now, we only have five percent of these banks, for the most part, the stockholders have.

The Court: Let me stop you at that point and throw a time factor in there. You have indicated you openly contemplated, if it was ever permissible, that it would become a part of your bank.

A. Right, yeah.

The Court: But, was there ever, in the original formation, any time factor attached to that forecast or was it simply [573] an indefinite partnership on a five-percent basis?

A. I think it was the latter, but with the feeling that it was going to come sooner than we thought, that the mood of Georgia banking and the—for the first time, the unanimity of thought among the Atlanta banks working together to try and get expanded city limits, that we thought it was going to be much shorter than that.

[574] The Court: Unless you were committing yourself for then an indefinite time to a five percent partnership?

The Witness: Yes, sir.

The Court: Assume a disapproval here, what happens and why?

The Witness: I do not know, it would be the biggest dilemma we would ever face.

The Court: What would be the motivating factor for you to divest? I assume one thing would be to free your skirts, so to speak, for branching if you could get approval, or what would be the factors as to the retention of the five percent? Doesn't it keep those banks closer to you in the event that you can't get in those areas yourself and in closer cooperation? How do the factors balance out?

The Witness: If that were to come to pass, it's going to take an awful lot of weighing on the part of the stockholders of these banks and their directors, and Citizens and Southern National Bank management to decide just what in the world to do. On the one hand is a market place and your name on a shingle that you want to keep giving people Citizens and Southern banking, and yet here is a [575] bank that has got its name on it already. If you took it off, you would damage it. I don't know, I just honestly don't know. I wish I knew.

The Court: Let me ask you a related question. How can you justify sending a customer of the Citizens and Southern to the C&S Sandy Springs and call it convenience?

The Witness: I guess it gets back to Mills Lane as individual and the way I was raised and trained. All my life I've done things to help other people unselfishly without, I guess, it's part of the way I was brought up.

The Court: Well, as I understand it, the effect is that you lose ninety-five percent of whatever profit there is in that account.

The Witness: Yes, as far as profit to the stockholder is concerned. You've got friends of the Citizens and Southern that are both the directors and stockholders and you've got a whole separate different set of stockholders and directors for Citizens and Southern National Bank.

The Court: The stockholders of Citizens and Southern Bank have a duty to maximize profits to that corporation.

The Witness: That's right. I've thought [576] about this. I do not know what in the world we would do. It would be the worst drastic dilemma we could ever face. I don't know what in the world to do.

The Court: Well, what basis has the Court got to say that absent this suit these banks would continue forever as Citizens and Southern Banks?

The Witness: I can't speak beyond my lifetime or the lifetime beyond Dick Kattel or C&S management. I'm paid by C&S Bank, my investment majority is in C&S National Bank, that's my heart, that's my love. The same with all these men out here who are presidents of these five percent banks. If anything ever happened to those five percent banks, we had to divest ourselves of them, they would be welcome back in Citizens and Southern National Bank. It's been their past, it's their present. It's what they want to make their future. It

would be painful and costly to the stockholders of these banks. When the rate of exchange was determined from Sandy Springs, took Sandy Springs' bank stock, the ratio was at that time as Citizens and Southern National Bank stock was selling for \$23 a share. It's now selling for forty-seven. They are going to take a terrific financial loss with that rate of [577] exchange. It was fair to them in the first place, but now has doubled in value. Without the Citizens and Southern tie with an adverse decision, that exchange is gone. The little bank is cast adrift and as we both agreed, we have got a five percent stock and they've got our name, and yet their daddy and mother, aunt and uncles in Citizens and Southern National Bank, every bank merger in Atlanta that any of the major banks have proposed, including the Peoples American, have been challenged. Everybody else dropped off and wouldn't contest the issue. Here's the FDIC that's giving us approval of mergers and in the same breath says, "You can't have a new branch," and in this year and a half that we have labored and suffered, twenty-seven banks have been opened in DeKalb County by competitors. We are losing a share of the market in a most unfair way. It just leaves you gasping. The war between banking bureaucracies, Federal Reserve doesn't see things like the Comptroller of the Currency. The Comptroller doesn't see things the way the FDIC does. You take and scramble up the approval of these mergers which are totally unrelated to whether or not we ought to have a new branch and new market place, it deliberately makes us stand by for over a year and [578] with the contemplation that this litigation, if it were settled in our favor, would not bring it to an end, but could go another year, has punished the Citizens and Southern Bank, disturbed the morale of its officers and directors, employees. I'm sure it's very pleasing to our competitors.

The Court: Well, it occurred to me that about the only basis I could think of where the Citizens and Southern really could change Citizens and Southern National customers where their

banks would be an ultimate contemplation that that is to become a part of your system. I assume that, though from your testimony, that that was applicable, say, to Stone Mountain.

The Witness: Of course, we contemplated from our side that Stone Mountain would become a part. I don't think we would have urged them to have taken our name if we hadn't thought that. I misjudged the character and attitude of Stone Mountain because I was not in touch with their management organization. There was a misjudgment on my part.

The Court: People's attitudes, of course, can change. It really boils down to the fact that the only place where you can really have a continuing contemplation that what you went into it with would [579] stay the same, the situation would stay the same, would be where the ownership other than that of Citizens and Southern was so fragmented that there was no possible court, antitrust action possible.

The Witness: That's certainly a possibility. I wish I knew what we would want to do and would have to do if that came to pass. It would be a decision that Mr. Kattel will have to make. I will probably be retired by the time this thing is resolved.

The Court: I suspect that everybody has to reconcile themselves. This has got to go to one more level at least, if not two.

The Witness: And in the meantime, we are hurting, banking is hurting. You can't hurt one bank without hurting the banking industry. Atlanta banking stands out in the nation for its progressiveness, what it's done. I don't know of any community where four banks have the mutual respect, trust and confidence that exists in Atlanta today. It wasn't always that way, but an adverse decision would set Atlanta's banking back as well as Citizens and Southern.

The Court: What I am seeking is not the results of this decision because that decision here has to be made on the record, but a forecast as, [580] which is purely a hypothetical one, if absent a decision by this Court, what would happen to those five banks?

The Witness: I don't know. There are, of course, several things that could happen. I don't know which one would take place.

The Court: Well, thank you very much. Anything further?

Mr. Kinkaid: No, Your Honor.

The Court: You may step down.

Let's see, it's a quarter of five. How long is your next witness going to be, or do you wish to wait until tomorrow morning?

Mr. Doyle: I'd prefer to waiting until in the morning.

The Court: We will recess until 10:00 A. M.

(Whereupon, court was recessed at 4:45 P. M. to reconvene at 10:00 A.M., September 28, 1972.)

[581]

Volume IV

(Title omitted in printing)

Transcript of proceedings had before The Honorable Charles A. Moye, Jr., Judge, United States District Court, on the 28th day of September, 1972, commencing at 10:00 o'clock A.M., in Atlanta, Fulton County, Georgia.

[582] The Court: Are we ready to proceed?

Mr. Hodgson: I call Mr. Howard Starks.

HOWARD STARKS,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. Will you state your full name for the record? A. Howard S. Starks.

Q. What is your position with the Citizens & Southern Bank?
A. Executive vice-president.

Q. Of the Citizens & Southern National Bank? A. Yes.

Q. What are your responsibilities in that position? A. I concern myself with services that we sell to people as opposed to those we sell to corporations.

Q. What is known as retail banking? A. Yes.

Q. What was your position before that? A. I was executive vice-president in charge of branch supervision.

Q. When did you become in charge of retail banking? [583]
A. I believe it was '69.

Q. How long had you been in charge as a branch supervisor?
A. Since about 1963 or '64.

Q. Previous to that, what was your position? A. I was assistant to the president.

Q. Mr. Lane? A. Yes.

Q. When did you become assistant to the president? A. In 1962, I believe.

Q. Mr. Starks, have you had experience in banking in the area of marketing? A. Yes.

Q. What experience have you had? A. Well, in the late 50's, I was marketing director.

Q. Have you had anything to do with the question concerning joint identification of banking services of Citizens & Southern? A. Yes.

Q. And the development of the logogram and how it is used? A. Yes.

Q. Will you describe for us exactly how the [584] bank came to use the logogram? A. Well, it dawned on us, I believe in the late 60's, we had been having architects design our banks; we saw the value in having a common identification, especially when we became known as the C&S Bank as opposed to Citizens and Southern National Bank. We felt this would be helpful, let everyone know when they saw this logogram full banking services were available. Much the same as when you see the sign on the Waffle House or a Gulf station.

[585] Q. Why did you allow—well, let me ask you this question. Do you or do you not allow the banks, the correspondent associate banks in which you own a 5% interest to use the name in Logogram? A. Yes, we do.

Q. Why do you allow them to use it? A. Because this is where Citizens & Southern's services are available.

Q. Is this true in each instance where you own 5% interest in the stock of the bank? A. Wherever the name C&S Bank is a part of the 5 percent relationship, yes, we permit the use.

Q. Correspondent associate relationship? A. Yes.

Q. Do you have any banks that you own five per cent of the stock which you do not have correspondent relationships with? A. No, sir. Restate the question.

Q. Are there any banks in which the holding company owns a 5% interest which you do not consider to be correspondent associated banks and which do not bear the name and logo? A. Yes, there is one in Cartersville; there is one in Fayetteville that do not carry the C&S Bank for a name, nor use the logo.

[586] The Court: It would be most helpful if you would get for me the definition of what is correspondent associate. What is the difference between a correspondent bank and correspondent associate bank? Is there something at an associate bank that there is not at a correspondent bank? What is the difference of putting the two words there?

Mr. Hodgson: I will speak in my place, Your Honor. Apart from the words, such as subsidiary and affiliate which do have those confusing differences, do have specific connotations. This one does not.

I will, therefore, ask Mr. Starks what the word correspondent associate bank or associate correspondent bank mean to you?

A. It's a phrase for identification which we have given to banks in which we own a 5% interest.

The Court: It is completely interchangeable with the 5%?

A. Yes, not completely interchangeable because we do have banks, we have a 5% interest that do not carry the Citizens & Southern name.

Mr. Hodgson: Frankly, I think Mr. Hall can testify much more in depth as to this question than Mr. Starks. I simply wanted him to state the distinction at this time.

[587] There are banks which do not carry the name and are not considered correspondent associated banks and have 5% interest. There is a difference.

The Court: You can tell me in your place, it will be just as useful, correspondent associate bank is a bank that has C&S correspondent services, plus the 5% interest generally?

Mr. Hodgson: Let me put them in three categories, if I may, because we are using two names, correspondent and associated. There are banks, and we'll put these aside. There are banks in which the Citizens & Southern Holding Company own 5% of the shares purely as an investment without any other rela-

tionship, which may include a correspondent relationship or may not. That is really not important whether it does.

There are some in which we have a purchase investment, some of them outside the state even. These appear in our annual statements which are part of the record. That is the purchased 5% interest.

Then there are those in which we own a 5% interest of the stock, which is the maximum that is allowed us in banks under the Georgia law, and if we wanted more than that under the Federal law, we would have to make application under Section 3 of the Federal Bank Holding Company Act to acquire it, [588] even if Georgia law permitted us to have more. But there are some of those in which, as I think Mr. Lane testified to an extent, Your Honor. These witnesses will testify there are some of those with which we feel such a close relationship that in addition to their being just 5%, we also call them correspondent associated banks or associate correspondents or frequently the word five percenters is used with respect to these, even though we may have a 5% interest in others.

So when Mr. Starks is talking about 5 percenters, I believe though he will testify to this, he is talking only about those with which we claim this very close relationship which we say gives us that variety of management control. So, that they are the same thing as affiliated with the technicalities of law permitted or the same thing as branches with technicalities of law permitted. That is when I say affiliates, I am going back to the Federal Reserve Act, related statutes, which affiliate is where you have a majority control of stock.

Did I pursue this far enough?

The Court: I think so. I get the idea that the correspondent associate tag or definition then is indicative of the somewhat subjective feeling on [589] the part of the Citizens & Southern in respect to—

Mr. Hodgson: No, sir, we feel it's a lot deeper than that. That's what we wish to develop during the day. It's far deeper than subjective. There is neither the legal control or ownership of more than the voting stock in a holding company itself. But there are shareholding by many friends, there are shareholdings by those who invited us to these banks for the purpose of expressing a desire that this relationship exists. There are Directors whose invitations caused this to come about in a mutual endeavor. There are officers who have supplied us who are Citizens & Southern born, bred and trained. There are systems in management and policies and all these things that go along and all of these relationships that enable us to rely as surely as if we owned the stock on those banks, being part of our system just as much as though they were a branch in which case there is simply divisions of the corporate structure where an affiliate being one which is part of the majority stock ownership of the holding company structure.

We do not quarrel with the legal results of that, that there is a possibility, this possibility that we lawyers talk about all the time, anything can [590] happen. That these banks could then, should they change their minds and their desires to have these relationships, re-sever themselves, nevertheless, because we were invited, because of our friendly shareholders, because of our friendly Directors, because of our management which is our management, all of which has been invited and which we give, when that happens, we then allow them to use the name and the logo. We then call them associated correspondents. Up until that time, the relationship is the existant one over which we would have no possibility of making a prediction.

We cannot say there is no possibility that there would be a separation, but we can, as we argued to the FDIC, argued strongly, that there is no reasonable possibility that it will take place absent it being forced upon us and that is, I think, the heart of the whole investigation, if Your Honor please, and it's

for this reason that I'm asking these witnesses to testify with respect to this relationship.

Now the ones in which we simply own a 5% interest and have not tagged with the word correspondent associates, are just plain correspondents. There are just correspondents in [591] addition to that.

[592] The Court: What you were sponsoring was not intended to minimize the familiarity or the strength of the relationship you have just mentioned. In using the word "subjective," I still understand it to be a subjective determination by the C&S Bank to the point that the relationship amounted to such a bond that the C&S gave it its designation and called it a correspondent associate.

Mr. Hodgson: I guess, Your Honor, there is no one stand when you get to the correspondent associate. I will make one point, it is a mutually agreed-upon thing; it is not opposed by either party. It is invited by either party, so they jointly agree and decide.

The Court: But it becomes subjective; I think that is the point, when the C&S is willing to entrust its goodwill and logo to the other bank.

Mr. Hodgson: It is obviously agreed it is an evolution that came about through a change in directors as the restrictive banking laws change.

[593] By Mr. Hodgson

Q. Mr. Starks, you heard Mr. Lane testify yesterday, I believe, with respect to Sandy Springs? A. Yes.

Q. In an effort to avoid duplication of the testimony already in the record, I will not ask you to state anything that you know of that he has already testified to. Will you tell the Court, if you don't mind, what your experience actually was with respect to the beginnings of Sandy Springs? A. Well, it was in

late '63 or early '64 we were developing a branch supervision in our organization; primarily, at this time we had sufficient banks that warranted branch supervision. Along about that time, as part of my activities, I was given the opportunity to review such audits and credit examinations as were being made of the bank in Sandy Springs. It became apparent that the bank was headed for trouble. I went to Mr. Lane and asked him if I might sit with the board, if I might not put them on the same system we were in the process of developing for the branch so that we might be able to detect these problems and cure them before it became cancerous. It was agreeable, and at first I sat there informally with the board and was later elected to the board and later having to resign [594] because the area was viewed as contiguous to Fulton County.

Q. That is under the Clayton Act? A. Yes.

Q. Mr. Starks, why do you feel it was your responsibility to take charge over the credits and loans of this bank when all you had was a five-percent stock interest? A. Well, there was a C&S man running that bank. It was recognized by a lot, if not most people, that this bank was organized by the C&S Bank, and we certainly had more than even a moral obligation to see that it met the convenience and needs of the Sandy Springs and that it was a valuable and profitable operation.

Q. Would you advise the Court of after this time how you treated the Sandy Springs in relation to how you were beginning to treat all branches in your supervision. A. We asked them to send in the same reports; we gave them the benefit of our sales information. We did this in an attempt to make these banks more effective.

Q. What was the attitude of the board members who were already there to your presence? [595] A. I think the relationship developed here very quickly that was the relationship that existed and has existed all along was one of mutual trust and confidence, one of respect.

Q. Will you tell us about the Chamblee pranch, as far as you have recollection of it? A. Well, George McKinnon and Mr. Lane were involved in that organization of the bank. The selection of the organizers, the selection of the directors, and I guess I got into the stream about in '64, somewhere along that line. Again, I was first as an advisor to the board and later as a board member, in more or less the same role I played in Sandy Springs.

[595-A] Q. Tell us something about Mr. McKinnon. A. He was first vice-president. I thing he was cashier at one time and later vice-president and cashier. When we acquired the Bank of Atlanta, he became president of that bank. When that bank merged with C&S National Bank, he was first vice-president and later assistant to the president.

Q. Do you recall the opening, say, at the Chamblee Bank? A. Yes, we had a lot of fun with those.

Q. Will you describe for us some of the things you did? A. Well, at the Chamblee opening, we thought it was important for the people to know we were in the community and we were anxious to serve them, and over and above the usual newspaper announcements, we had a formal opening where we invited the people to come by and look us over. In order to do that, we sent invitations to them telling them to come by. Hopefully, they would do some business. We also decided to take a group, a C&S group of employees, junior officers and so on, to Chamblee and go house-to-house and door-to-door extending invitations to the opening, inviting them to come and bank at the Chamblee National Bank.

Q. How many people do you recall were involved [595-B] in this? A. Maybe as many as forty or fifty.

Q. For how long? A. Two or three days immediately preceding the opening.

Q. Is that what is known as a blitz? A. Yes, that is what we referred to as a blitz. A few got bit by a few dogs, too.

Q. Did you do this consistently with other bank openings also? A. Yes.

Q. Was there a distinction as to whether it was a branch or a five-percenter opening? A. No.

Q. Tell us your recollection of the C&S Park National. A. Park National was started when we recognized really that Executive Park was a developing area. Even though we had an office at Toco Hills, we felt some of the C&S National Bank customers were moving out there and there was growth in that area such that it warranted a banking office in the Executive Park proper, and the only way we could get it there was through a five-percent correspondent associate. So negotiations were begun for a lease.

[595-C] Q. Who negotiated that lease? A. I believe I had a good part of it, along with Bob Hazelrig, who was president of that bank.

Q. Why was Bob Hazelrig selected to be president? A. Well, he had to deal with the corporate accounts division, and when this office opened, it was felt these were business relationships rather than what I would refer to as a bedroom community. This was a business community.

Q. Where did the shareholders come from? A. Well, the shareholders came from the customers of the C&S Bank. People who were corporate customers of the C&S Bank and friends of Mr. Hazelrig's. The directors were primarily people who we did business within that area.

Q. How were the organizers and directors selected? A. If my memory serves me correctly, Bob Hazelrig and I selected them or made up the slates and Mr. Lane referred them.

[596] Q. Tell us your recollection about Citizens & Southern at North Fulton out at North Roswell. A. There was a group in

Roswell which felt that they needed additional facilities out there and this was after, I believe Mr. Lane's testimony of yesterday with Mr. Sims Garrett, and I was not involved in that negotiation. I was invited to lunch one day with Dr. Irving in that community, Mr. Harold Benson, I believe, and the bank, it was decided that we would put a bank in Roswell and that Mr. Lane, who had formerly been in Sandy Springs would go out to run it. Lou Fortuna, who was at that time at Sandy Springs, was serving a great number of customers from Roswell. It was very apparent that there was a need, that they had to come by several banks to do business with Citizens & Southern Bank. And so we wanted to go out there. This was the way it was evolved. Lane sold the stock, the friends at Citizens & Southern Bank, officers, employees of the Citizens & Southern Bank bought a little stock in it, too.

Q. How was the Board selected? A. In much the same fashion, Hugh Lane mainly made the nomination, we submitted them and they were approved by Mr. Lane.

Q. Who provided the economics research? A. Our market research department at the Citizens [597] & Southern National Bank in the person of Mr. Ray Herman.

Q. Who provided and warehoused the property for eventual use? A. We bought the property, as I recall, in the Citizens & Southern Holding Company. We also bought a building, what was termed then a portable building, temporary quarters which, unfortunately the bank still occupies and leased it to that particular bank. It's now inadequate.

Q. What did you have to do with South DeKalb, Citizens & Southern at South DeKalb? A. Very little, then, other than to anticipate the development in that area and to acquire two pieces of property, even though we couldn't get there at the moment, we anticipated there'd be changes in the branch banking laws. We knew it had to be there ultimately. I merely acquired

the property and then Dan Handley subsequently organized the handling of it.

Q. Did you ever have anything to do with the Citizens & Southern Bank at Stone Mountain? A. Yes, I did.

Q. Would you explain to the Court how that came about? A. I'm just trying to remember, refresh my memory on that date. I know the bank was organized in '57. [598] I had nothing to do with that. I know in '59, we acquired a 5% interest in the bank. Mr. Hall went on the Board. It was sometime after that, in the middle of '60, that Joe was, felt that he needed a little help. That two people might be more effective on that Board and the bank, at that time, was having some credit problems and I had had some credit experience. We felt that we were complementing one another. I subsequently went on that Board after some hassel trying to get qualifying shares.

Q. By Joe, you mean Mr. Joe Hall? A. Mr. Joseph A. Hall, III.

Q. Let me ask you this, Mr. Starks, how many of these 5 percentor boards did you sit on, either as a Director or as an advisory Director, or with whom, or with which you met from time to time? A. All of them in the metropolitan area.

Q. All of them? A. All of them.

Q. Including this one at Stone Mountain? A. Yes, sir.

Q. Was there any difference between the attitude of the Board at Stone Mountain as compared to the others? A. Well, yes, there was a great difference.

Q. Would you describe that difference? A. Well, first of all, Bob Maughon went with that [599] bank when it was organized before it became, before we had any interest in it.

Q. Bob Maughon was whom? A. Bob Maughon, I believe, at that time was Cashier at the bank. He had severed his con-

nection with The Citizens & Southern Bank. I think he felt closer to the Board than he did The Citizens & Southern Bank.

I think the fact that the 40% of the bank was controlled by the McCurdy family, they needed us, but I don't think they really wanted us. They called for help when they had credit problems. I think they wanted to get all the good out of it, but they really didn't want to participate and let us really help them manage the bank so it might be most effective.

I recall in trying to institute operational procedures or trying to suggest that certain action be considered or making recommendations that it was often the habit of the Board to postpone any action until the next meeting. I always had a feeling or I do as I reflect it anyway, that they wanted to meet privately after the meeting and bring it up during the meeting again at the next meeting. This is not a fact, this is the way I felt about it.

Q. Do you have any opinion as to whether or not The Citizens & Southern National Bank and Holding Company, [600] through branch supervision or otherwise, exerted and exerts today any significant influence or control over the management of the five banks that are the subject of this litigation, Citizens & Southern at North Fulton, at Chamblee, Park National and South DeKalb?

Mr. Frisbie: Your Honor, if I might, that's two questions, actually, and both of these are critical to the issues in this case. If we could break that down into two questions.

Mr. Hodgson: I'm perfectly willing to break them down. What are the two parts?

Mr. Frisbie: You said, did they exert any significant influence or control over management. I believe that is the two separate questions.

Q. Let me ask you, did they exert control over these five banks?

Mr. Frisbie: Your Honor, if I may again, could we have Mr. Hodgson, the same as he required of us, to define control that he is speaking of in this instance?

Q. Let me ask you this, Mr. Starks, what was your view of the relationship between The Citizens & Southern National Bank and Holding Company on one hand and each of these five banks, on the other, with respect to management of those banks?

[601] A. There's no difference than between our relationship with the branches and the five percenters because what we had to offer was solicited, invited, wanted, received, and our recommendations were readily accepted. I think that even sometimes you have to sell branch managers on a course of action that even makes good sense. But, all of our—we never had any trouble with the exception of Stone Mountain of having the new services that we wanted to offer through the five percenters, as well as the branch accepted, promoted and enthusiastically received, procedures that we wanted to put in, control methods. After all, the guy who ran this bank was a Citizens & Southern man and the Directors respected us and had confidence in us and readily accepted the recommendations that we made.

Q. Had they invited you? A. They invited us, solicited our help and took our advice.

Q. You heard yesterday, I presume, the colloquies between the Court and Mr. Lane and the question was asked somewhat like this, I think. How can you justify serving a five percenter bank correspondent associate bank, with the business of one of the customers of the National Bank when the proprietary interest in that five percenter is just five per cent? Would you respond to that question? A. Well, then this bank, although it may be disbelievable, perhaps, or hard to believe, in some people's minds, has an attitude that the interest of the community comes first and that customers service is our number one business value, and that if we serve the community and do the job for the customer, that ultimately there will be a payoff. And a case for directing customers to a five percenter bank, if it makes sense for

them to bank there, if that's where they want to bank, we certainly have no objection. In fact, we would encourage it. After all, we would much rather have that customer go to a Sandy Springs or Chamblee or South DeKalb or Roswell Citizens & Southern Bank and to be served than to see them go to the Trust Company of Georgia or First National Bank. For them, it's a matter of convenience. It would be kind of shortsighted on our part. Frankly, we hope some day to have them all back in the same family.

Mr. Hodgson: May I have just a moment, Your Honor.

The other colloquy of the Court that I want to remind you of, Mr. Starks, was when the Court and Mr. Lane were wrestling with the dilemma of suppose the mergers are denied, what would then happen. I ask you that question and in your opinion? A. Well. Well, the Vice Chairman——

The Court: If you are going to ask that [603] question, I want to repeat, as I did yesterday, I'm not sure that that inquiry is relevant.

Mr. Hodgson: I'm not either.

The Court: What would happen if the merger were denied or this Court ruled adversely, the relevant question is what would happen absent any action, absent approval. In other words, would they stay the same absent any favorable action on an acquisition.

Mr. Hodgson: Absent this application never having been made.

The Court: That's right, what would happen.

Mr. Hodgson: I didn't perceive that distinction. That's always been my view that that's a much different question.

The Court: I think that's the relevant inquiry. I don't think—so far, I don't see the relevance of what would happen if this Court issued an adverse decision. That's the matter at issue.

A. Would you like to restate the Judge's question or have him restate it. I know I didn't know the answer to the other question, I don't know if I would know the answer to this one or not.

Q. Mr. Starks, I may be as chicken as you, I may turn you over to Mr. Kinkaid and make up my mind later.

[604]

Cross-Examination

By Mr. Frisbie

Q. Mr. Starks, I would like to go back to some of your first testimony for just a second. When you were talking about the definition of a correspondent associate, in your words, you made some replies; as I understood your definition of a correspondent associate from your testimony, it was a bank in which the C&S was holding five percent, and the bank enjoyed the use of the name and the logo of the Citizens & Southern National Bank. You also talked about a few banks that were five percenters but not correspondent associates. What did you mean by that? A. I mean by that banks that we had a five-percent interest but were not correspondent associates.

Q. In your opinion, what relationship, if any, does the Bank of Woodstock have? A. The Bank of Woodstock, I would say, was a correspondent in which we have a five-percent interest. The degree of influence and control, I cannot testify to.

Q. Was the Citizens Bank of Hapeville known as either a correspondent associate or a five percenter? A. I think not.

[605] Q. The C&S Holding Company never, to your knowledge, owned five percent of the stock of that bank? A. They may have had five percent in the bank as a casual investment, I would say.

Q. What about the Bank of Stone Mountain? Would you classify it as a five percenter or a correspondent associate? A.

I would think in 1959, when we took a five-percent interest in the Bank of Stone Mountain, when Joe Hall went on that board, that bank was considered by us to be a correspondent associate. I don't think now that the board out there knew the stockholders of the C&S to be in control in the role of what we term a correspondent associate.

Q. What it boils down to then, actually, if you take a five-percent interest and designate it with the title "correspondent associate"; then it is a correspondent associate; is that correct?

A. Not in my mind. As I testified in my testimony earlier, it is a question of mutual trust, mutual confidence and respect and interdependence.

Q. I believe you also testified that wherever the C&S logo would appear, this would mean that C&S services are available there; is that substantially what you testified to? [606] A. Substantially, yes.

Q. When you say C&S services, what services are you talking about? A. I'm talking about all of the C&S services. We have never made a designation between the services that are available in our branches and those that are available through our affiliates and correspondent associates. We do income taxes at both places, for instance, with a back-up central crew where such back-up is necessary. When you initiate new services such as the payment holiday, it is available to the associate correspondents or affiliates.

Q. Trust services are not performed at that particular branch? A. No, but they are available. We would not risk losing your customer to somebody else, let me put it that way.

Q. Then you would consider that if the C&S Bank of Sandy Springs offered one of its customers trust service that the service that bank in Sandy Springs would be offering would actually be the services of the C&S National; would it not? A. They would.

Q. And the same would be true with the tax [607] services you perform at each branch, say Sandy Springs, for instance? A. That service is being performed by Sandy Springs personnel. We trained people.

Q. Is that a Sandy Springs service? A. Well, it's a C&S service being offered by the Bank of Sandy Springs.

Q. Does Sandy Springs have an international department? A. Of course not.

Q. Would you consider services offered by the Sandy Springs bank to be yours in this field? A. I would consider it to be a service available through the Bank of Sandy Springs, by the fact that the president or an officer of the bank might bring the customer to our international banking service. Or, our international banking officer may contact the customer without the manager, but it would be at his suggestion; it would be his referral.

Q. What about checking-account services? Would that be a Sandy Springs service or a service of the C&S? A. It's considered a service of Sandy Springs. The deposit may be taken at the Sandy Springs office, but the computer work is done down on Mitchell Street.

[608] Q. Do you offer demand deposit accounting to your regular correspondents? A. Of course, for those banks, non-correspondent associate banks.

Q. Do you consider when they offer them through their banks that it is a service of the C&S National? A. I think it is merely an economical handling of the check or a handling of the deposits, that it is a service of the C&S, rendered by the C&S people offering that service. We had to be helpful to the customer; we have to compete on the basis of being problem solvers. That is still the C&S philosophy of doing business. It is just not the mechanics of pushing the button and stamping the receipt.

Q. And when income-tax season rolls around, I believe last year you had what you called tax shelters? A. Yes, we called them tax shelters and we had little tents in each office.

Q. Was one of them set up in Sandy Springs? A. Yes.

Q. And the earnings or revenue that come from this tax shelter, to which bank are they attributed? A. The income goes back to the Sandy Springs branch. The services that we perform, we charge the overall cost of the computer runs. We share the [609] expenses and they get the income. The expenses are pro-rated out and the difference is their profit.

Q. Are they staffed by C&S people? A. They are staffed by C&S-trained people.

Q. If a customer came to the international department for service in Sandy Springs, who would the income be attributable to? A. As the situation stands now, I would say it would be attributable to the international department. They did the work solely, so they would get the income.

Q. The same as the trust department? A. Yes. But we are trying to work out a method to compensate for this. Eighty percent of our business is through referral. We haven't done it yet, but we are looking for a way.

Q. How about services and income that originates from checking accounts? To which bank would this be attributed? A. They go to the bank who afforded the service.

Q. Would that be true with savings accounts and interest earned? A. True.

Q. I believe you mentioned that you had to get off of the board of directors of the Sandy Springs bank at one time. [610] A. I had to get off of all of them as an official member of the board. It made no difference in the role I played; I continued on as an advisor to the directors. This is what they called me.

Q. Why were you told to get off the board? A. Well, I am not familiar with all of the laws and regulations. I know orig-

inally, when we asked to go on these boards, it was felt there was enough wasteland between Sandy Springs and Atlanta and Chamblee so they would not be contiguous; however, later on it was ruled, I believe, they were contiguous.

Q. That was Section 8 of the Clayton Act? A. Yes, I believe that's what Mr. Hodgson says.

Q. Mr. Starks, you also testified as to what you did on the board of directors out there a little bit, you alluded to your functions out there on the board. To which banks did that refer? A. To any of the correspondent associates.

Q. Maybe my question should be were your functions and duties any different than as a voting director of the correspondent associate banks? Were they any different? A. No.

Q. You did mention you were on the board at Stone Mountain also? [611] A. That would be correct.

Q. And in 1968, did you accompany Mr. Hall and Mr. Lane to a hearing before the Federal Reserve Board in Washington, D.C.? A. I did.

[612] Q. During the Federal hearing, a question was directed to your group concerning the function of the directors on the boards of these banks. I will read to you and offer to you to inspect. Your reply to the question which was generally, "What were your duties there?" says, "after all, in most cases the men who were running these banks, particularly these smaller ones in the greater metropolitan Atlanta area, are representing a lot of talent, a lot of ability, but are of limited years of service in the depth of experience. We feel we give them this depth of experience by sitting on the board." This is on Page 26; I'm sorry.

Do you recall this statement, Mr. Starks? A. It sounds like me.

Q. Do you still believe that that is a true statement? A. Yes.

Q. For that period of time. And you have stated you were on the board at Stone Mountain and that was in 1959. Who was the president at that time? A. I was on the board in 1959.

Q. I beg your pardon. When were you first on [613] the board at Stone Mountain? A. Gosh, I don't know, '60 sometime. It was certainly after '63. I'm going to make a stab at it, maybe '63, '64 or '5.

Q. Can you remember who the president was at that time? A. At what time?

Q. The time you originally got on the board? A. I believe that Walter Gibson was the president at that time and subsequently became sick. We replaced him with Angus Parker.

Q. How many years of banking experience did Mr. Walt Gibson have? A. I guess he had the same experience for twenty years.

Q. Mr. Angus Parker, how much banking experience did he have? A. Angus had several years of experience, primarily, however, only in the installment-loan area or, basically, in the installment loan area. I should say not only——

Q. You were on the board at the Chamblee National Bank also, were you not? A. Yes.

Q. How many years had Mr. Harris been a banker? [614] A. Mr. Harris had been a banker a long, long time. However, there were areas where Mr. Hall or myself were still in the position to be helpful to him in areas for which he had not had direct experience.

Q. Now you also are on the board at Sandy Springs, at the C&S National Bank of Sandy Springs? A. Yes.

Q. How many years' experience has Tom Cook had at C&S? A. He had about twelve, if I recall correctly. Tom, however, as Mr. Lane I believe testified yesterday, was a liberal lender and needed help. He was also a little independent and hard-

headed and perhaps over-evaluated his capacities, and we found it necessary to try and encourage him not to make loans on dump trucks or against contractor retainage. Things you just don't do and not get in trouble.

Q. Mr. Starks, have you ever bought any stock in any of these five-percent banks? A. You'd better believe it.

Q. A good deal? A. It's a matter of definition. I have a little piece of every one of them.

Q. Did you borrow any money for these purchases? A. Indeed I did.

[615] Q. Did you borrow at a preferred rate? A. I did.

Q. Do you still have any of this stock? A. I do.

Q. I believe you stated that you went to the branch supervision department about 1963 or—— A. '63, '4, I can't remember exactly. I think about that time, organized it. I mean it didn't exist then.

Q. Oh, this was the original organization? A. That is correct.

Q. Mr. Herb Dickson was in that department also? A. Mr. Herb Dickson. He and I had a drink that night. We decided he would take the retail, I would take the wholesale.

Q. Was Mr. Lou Fortuna ever a member of the branch supervision department? A. I don't believe so.

Q. Mr. Starks, in an attempt to try to refresh your recollection—— A. Please do; it's lousy.

Q. Just a second. In a deposition taken by this Department of Mr. Louis J. Fortuna on August 7th of this year, on Page 63, I spoke to Mr. Fortuna and established that he went out to Sandy Springs back in September of [616] 1964. My question was that, "And prior to that, you were in branch supervision?"

This was in response to earlier testimony. Mr. Fortuna's answer is, "That is correct."

Question: "What was your position in branch supervision at that time?"

Answer by Mr. Fortuna: "Let's go back two years prior to that, when the National Bank was expanding branch operations in Atlanta, set up under a fellow named Herb Dickson, who was executive vice-president of coordination team. I, having been trained possibly in retail banking as such, was coordinator of retail banking in the Atlanta area, metropolitan area. This, then, particular division then came under Howard Starks. When he took over branch supervision, my function was working with Howard Starks in retail banking under branch supervision."

Does this refresh your memory at all? A. Yes, it's hazy, and, yes, I do remember there was an interim period in there when Bob Adamson left, and I believe this was it, that Lou did work with Herb on, particularly, some branch credits. I think that's right.

My mind is hazy on it; I really don't remember. [617] Branch supervision, basically, in those days consisted of me and Connie Nesbitt in the early days.

Q. Can you identify Connie Nesbitt? A. She was my secretary.

Q. That was my next question. How many people were in branch supervision at the time it started? A. There were two, and then John McIntyre, who was then vice-president in charge of the Tenth Street office, and Bill Mathis, in charge of the Howell Mill office, came in, and then we eventually supplemented the staff. I think the trouble over Lou Fortuna is a matter of semantics and definition. I don't think it's significant.

Q. I don't want to belabor a point unnecessarily; I do need to establish one thing. We established, or the deposition estab-

lishes, that Mr. Fortuna went to Sandy Springs back in '64? A. On my recommendation.

Q. Two years prior to that time is when the branch supervision department was started. Now that would place it about '62 or early, possibly, '63. A. This is a matter again of definition, what was branch supervision.

Q. Which banks came under the supervision of the branch supervision department? Not by name, by classification. [618] A. All of those in metropolitan Atlanta.

Q. All branches? A. Yes, and all affiliates and five percenters.

Q. Any regular correspondents? A. No.

Q. And at that time, in 1963 or '64, can we establish that there were only three correspondent associates banks in existence at that time?

Mr. Hodgson: Excuse me. Is counsel referring to the whole state or just metropolitan Atlanta?

Mr. Frisbie: I'm sorry. In the metro area.

The Court: Why don't you name them and let him see.

Mr. Frisbee: Sandy Springs, Chamblee, Stone Mountain.

The Court: Do you recall any more?

A. Well, there were—no, five percenters. Could I refresh my memory on some dates here? We are talking about the period what?

Q. 1963 or '64. A. Sandy Springs, Chamblee and Stone Mountain; of a variety, yes, I believe that's correct.

[619] Q. I don't believe you ever stated what the original function of that department was. A. It was responsible to the needs of the branch initially; then it was felt they would like a staff office in the bank where they would like to have one guy to whom they might have access for help and guidance in all mat-

ters, so that they wouldn't have to run all over. Essentially, they needed to have one guy to talk to, whether it was a credit or an operations problem.

Q. In 1963 and '64, we have established that you were the supervisor over that department. Would you have been the person that these branches and correspondent associates would likely come to? A. Mostly. We are a very loosely-knit organization. If somebody wanted to talk to Joe Hall or Dan Hodgson, they had a perfect right to.

Q. Did you ever go out and visit any of the five-percent banks? A. You better believe I did.

Q. How often did you do that? A. Certainly, with few exceptions, not less than once a month, and even more frequently whenever possible.

Q. Did you supply the Sandy Springs Bank with [620] a copy of the general operating guide? A. It was furnished; whether it came through my office or not, I couldn't say.

Q. Were they furnished at that time, in '63 or '64? A. I can't remember whether they were given to them. I'm sure people took them with them when they went.

Q. Were the correspondent associate banks, were they on the regular correspondence list in the same manner as the branch affiliates at that time? A. Yes.

Q. In looking through the general operations guide that has been furnished by the plaintiff in this case, the addressee portion is to the president of the bank or the manager of the branch or the president of the affiliate banks, but there is no mention in those years of any correspondence going to any of the correspondent associates. A. In what years?

Q. '62, '63 and '64. A. I can't testify to that for sure. I think most of the information that we furnished to the banks, to the best of my knowledge, was information to all correspondent associates.

Q. Well, my investigative manual is very large [621] and I may have overlooked one. A. I think the proof of the pudding would be whether they're in the files of those banks. I don't know.

Q. You stated in your direct testimony that these banks were recognized as being part of C&S. What do you mean by that? A. Referring to Sandy Springs and Chamblee, they were recognized by a lot of people as being organized by C&S.

Q. Did any of these, either the Chamblee or Sandy Springs, have a sign or put anything on their stationery to designate to the public that they were correspondent associates of the C&S National? A. Some of them did; some of them did not. I think, however, it was generally understood by the people that it was the C&S National Bank who took part in the opening. It was common knowledge that we had something to do with it.

Q. Are you referring to the people who took part in the blitzes? A. Yes.

Q. And those persons who did the blitzes, did they identify themselves as being C&S National employees on all occasions? [622] A. I couldn't say on all occasions.

Q. On some occasions? A. I know I had a badge on at the Chamblee opening identifying myself.

Q. How many people attended those openings? A. We had a system; we had two or three bank officers on the scene at all times during the openings.

Q. You said something about some of the banks having some manner of identifying themselves as correspondent associates. Can you give us any detail on that? A. No, I can't. I remember a sign, I believe, which designated one as an associate correspondent.

Q. Which bank was it? A. I don't remember.

Q. None of these banks bore the Citizens & Southern's name at that time, is that correct? A. That is correct.

Q. And the logo had not come into existence until what year? A. '68—'69, I believe.

Q. Are you aware that what is known as the bank of Stone Mountain had at least two signs that were placed at the city limits of Stone Mountain designating themselves as correspondent associates of the C&S [623] National Bank? A. At what time?

Q. In 1963 or '64. A. Those might be the signs I just recalled.

Q. You don't recall any other banks? A. I just recall seeing the sign. I don't know.

Q. When was the first credit audit by C&S National done at Sandy Springs? A. I can't testify to that.

Q. Does the bank supervisor take care of the credit audits for the correspondent associate banks? A. Yes.

Q. You stated earlier in testifying that in reviewing the audits—— A. I want to distinguish that credit examinations were functions of the branch supervisor, but operational audits were done by our auditing department.

Q. Those are coordinated? A. Those are not coordinated. They are just as big a surprise to me as the guy who is running the branch.

Q. Can you tell me when the first operating audit was? Do you know? A. No.

Q. Can you tell me if there was one prior to [624] '64? A. I would think so.

Q. Is it true that the problem at the Sandy Springs came to your attention only after an audit by the federal agency? A. I think that was part of it. I have the impression that we also

picked up some problems of our own, maybe from the supervisor's audit. I am not positive.

Q. This problem at Sandy Springs was considered serious by you and by the Sandy Springs Bank at that time? A. Yes, when it was discovered.

Q. And it was considered serious by the regulatory authorities? A. Later, yes.

Q. And serious enough that you had a special meeting called of the directors to raise more capital? A. Yes.

Q. How was that capital raised? A. By a capital note.

Q. It was purchased by whom? A. C&S National Bank.

Q. How did this credit problem develop out at that bank? Was there a bank supervisor supervising [625] the bank? A. You will note in '63 or '4 that the branch supervision that included the correspondent associates was being developed, and it was at my suggestion that we then put it in control, and so forth, the same as we had for the branches and the five percenters, because we uncovered these things.

Q. Prior to the creation of the supervisory department, there was no one looking after the correspondent associates? A. I think we looked to various people in the bank to look after that. That was one of the reasons we formed the department, because it was not being adequately done in our judgment.

Q. If you had been supervising and reviewing the credit at Sandy Springs then as closely as you do now, wouldn't you have discovered the problem at that time? A. I believe so.

Q. Then, it is fair to say that your degree of supervision over that bank is greater than it has been at any time before? A. We are getting better every year.

Q. Mr. Starks, when application for merger with Emory and East Point was filed after that time—— [626] A. I beg your pardon; I am not with you.

Q. After the period of time where an application was filed for permission to acquire the assets and assume the liabilities of each of the correspondent associates, East Point and Emory—— A. Okay, I am with you.

Q. After that period of time, there was a document called a supplement to the application that was filed, containing additional information about the bank. You may or may not be familiar with that document, but it purports to show how the Stone Mountain Bank was different from the others——

A. In the middle of '59, some of the original Stone Mountain people came to the C&S National and asked for help. They had credit problems, and they felt they needed someone who was more familiar with the day-to-day operations than they were.

Q. At this point was C&S guidance given to them in this first year of existence? A. No C&S guidance was given to them during the first few years of their existence.

[627] Q. Were you sitting in the courtroom yesterday, Mr. Starks? A. Yes, sir.

Q. Did you hear Mr. Hodgson state in his opening remarks there that the plaintiff has ignored the defendants' assertion that these five small banks, in name and in fact, are C&S Banks? They have been from the time they were organized in the eyes of their shareholders, the public, the regulators, their competitors, and their own officers and directors of Citizens & Southern Bank. This is what they are referring to, in name, and in fact, they are Citizens & Southern Banks and have been from the time they were organized. Isn't it a fair statement, based on your previous testimony you have just given, that for several years after the Sandy Springs and Chamblee were formed, after they were organized, they were

not C&S Banks in the eyes of the public? A. No, I do not think that is a fair statement. I think they were Citizens & Southern Banks in the eyes of the public.

Q. Do you think it's a fair statement to say for several years after Chamblee and Sandy Springs were organized, they were not Citizens & Southern Banks in the eyes of their competitors? A. I think they were Citizens & Southern Banks [628] in the eyes of their competitors.

Mr. Frisbie: Your Honor, could we have a ten-minute recess?

The Court: All right, we will take a ten-minute recess.

Q. Mr. Starks, you stated in your earlier testimony that one of the differences between a correspondent associate and regular correspondent was that a correspondent associate enjoyed the mutual trust, confidence, freely asked for and gave advice, respect, and inter-dependence, one dependent on the other; is that substantially what you said? A. That's right.

Q. If you take a regular correspondent bank you don't own any five per cent in, do you feel that you have mutual trust between those two banks, Citizens & Southern National and that bank? A. Yes.

Q. Do you feel the two banks have confidence in each other in their dealings normally? A. Yes.

Q. Do regular correspondent banks ever ask Citizens & Southern National for advice? A. Yes.

Q. Do you believe the banks respect each other? [629] A. Yes.

Q. Do you believe that there is an interdependence on the banks? A. To a degree, the correspondent associates, we are partners; we are married.

Q. But there is some interdependence among the banks in that one gets correspondent services and the other pays for it?

A. To a degree, it's semantics.

Q. You also stated in your direct testimony, I believe your words were "later on"; I think you just referred to the time the branch supervision department started. You said later on, you started treating them the same as the branches, no different.

When did this start, when you started treating them no different than branches? A. Immediately after Sandy Springs; I would say after we discovered the problem at Sandy Springs. That's a fair statement.

Q. You also mentioned the wording "management control" as being one of the essential elements when we were talking about the differences between a correspondent associate and five percenters or regular? A. Right.

Q. Could you briefly define what you mean by [630] management control, in your own words? A. Management control result because we have a C&S-raised, C&S-trained, C&S disciple running these banks. It results because the board of directors has the confidence, the respect, the other things that I previously referred to, of the Citizens & Southern National Bank and we, in turn, in them, and there is a great deal of interdependence to a great degree not present in a correspondent bank.

Q. So then the management control you are speaking of, the management you are referring to is the management of the correspondent associate bank? A. No, no. Certainly that is part of it. What I am saying is that they readily accept the new services that we develop; they readily accept our suggestions and recommendations. They want and find useful the credit examinations and the audits that we do, the reporting that we have put in. It's the working-together business relationship. We, the Citizens & Southern National Bank control the role that this bank plays in the economy, the role that, the effectiveness that—

we increase the effectiveness of this bank much beyond the point that they could possibly do for themselves alone.

Q. Is this management control the same [631] management control you had over a branch? A. Other than legal, yes.

Q. Can you fire a branch manager? A. Can I fire a branch manager today or when I was in branch supervision?

Q. Can Citizens & Southern National fire a branch manager? A. Yes.

Q. Can Citizens & Southern fire the president of the Bank of Sandy Springs? A. I think it's done in a different way. The end result is the same. You go to the board; you say, "Hey, we have got a real problem here, and a divorce has to be", and they have the trust and the other things that I have been talking to you about. I have never had any problems accomplishing this if it were necessary. It's pretty damn drastic.

Q. How long did it take you to get Mr. Cook out of Sandy Springs? A. I would say there was probably a period of maybe three weeks, thereabouts. I talked to each board member individually.

Q. In the same Federal Reserve hearing we were talking about earlier, on Page 27, Mr. Lane testified:

Let's take Sandy Springs again. We had a [632] Citizens & Southern man out there as president. He got in trouble. We went to that bank board and said, 'This buy (I'm sure it means boy) can't cut the mustard.' They wouldn't replace him.

We went back six months later to the board and said, 'This guy can't do it.' They said, 'No, he is a nice young guy. We aren't going to get rid of him.'

Mr. O'Connell stated: "Was this nice young guy your man?"

Mr. Lane: "Yes."

Mr. O'Connell: "You had him put in there?"

Mr. Lane: "Yes, sir, it was a year later that the board that had its own chairman, I guess the largest stockholder in the bank, he finally said, 'You all were right. Give us somebody else. We have got to get rid of Taylor Cook.'"

A. My recollection of the time span and Mr. Lane's at that time are obviously different. I don't recall it being that long.

Q. You also stated earlier you were expecting about this referral of customers back and forth from Citizens & Southern National Bank to the correspondent associates? [633] A. Yes, sir.

Q. I believe you stated something to the effect that you encouraged them to use the five-percent banks because you would rather see them go there than to Trust Company or First National? A. Certainly, if a matter of convenience, particularly.

Q. Well, isn't it a fair statement to say that this occurs because you would rather have five percent of something in form of stock and the correspondent business rather than ninety-five percent of nothing? A. I wouldn't put it that way. I think that what we were really looking at here is the ultimate merger of these two banks that were all one in the same family and we eventually would recapture that customer. It was a short-term, unselfish thing that would ultimately bring us return.

Q. Isn't it also true in your own mind that, as Mr. Lane testified yesterday, an important part of the correspondent associate relationship is the fact of expectation of merger? A. I would say yes.

Mr. Frisbie: No further questions.

Redirect Examination

By Mr. Hodgson

[634] Q. Mr. Starks, Mr. Frisbie was reading you out of the Federal Reserve transcript of April, 1968 and called your attention to some of your testimony to the effect that you were representing a lot of talent and a lot of ability, the presidents,

but are of limited years of service. We feel we give them this depth of service sitting on the board. Then he talked, I believe, about Mr. Parker and Mr. Harris and some others. Do you recall this question by Mr. O'Connell? Indeed, he included Mr. Fortuna in the illustration, I believe, and the answer by Mr. Fortuna to this end.

Mr. O'Connell: For instance, in your bank then, we are speaking of the Sandy Springs Bank, if at a point in time an analysis of the loan portfolio of that bank indicated that you are very heavy in a particular long-term type of loan, and, in the judgment of C and S, that that portfolio should have a major adjustment to short term loans, to more local type loans, to meet the local business needs, and that suggestion is made, Mr. Fortuna, could you say, no, I won't change, and feel free that that decision would stick?

Mr. Fortuna: I think the approach is having had the experience of twenty years, [635] seventeen years with the Citizens and Southern, and realizing that their experience is greater than mine. I would certainly listen to counsel and we would make the change because we would all benefit thereby, because Citizens & Southern has given me a long-range point of view. I'm going to go the long-range way.

Do you recall that testimony? A. Yes, sir, I believe I do.

Q. Mr. Starks, have the five-percenter banks in the Atlanta metropolitan area ever been under any other organization in the National Bank than branch supervision? Any other organization? A. No.

Q. Mr. Frisbie was asking you some questions about the distinction between these correspondent associates here and an ordinary correspondent relationship there. I would like for you to distinguish for the Court this relationship to the extent you see it in two particulars, first with respect to the degree of reliance that the management of an ordinary correspondent places upon you and the degree of reliance that a correspondent as-

sociate places upon you with respect to management. A. Well, I can't think of an instance unless [636] we were called upon to give up a man for, in an emergency period, where a correspondent would rely on us for management, other than to assist him with investments and that sort of thing.

Q. I ask you the question in reverse style and ask you with respect to responsibility for furnishing management from the point of view of yourself to compare that responsibility or sense of responsibility, to compare an ordinary correspondent to a correspondent associate. A. From a branch supervision standpoint?

Q. Yes. A. None.

Q. You find no distinction between—— A. No, I misunderstood your question then.

Q. What distinction do you find with respect to responsibility to furnish management on to a correspondent, on the one hand, and to a correspondent associate on the other? A. Well, one, if we are asked to try to find somebody to help run a bank, if this is the point you are trying to make, and part of the correspondent, this is one thing. We have an obligation more than moral to furnish management for a five percentor or correspondent associate.

[637] Mr. Hodgson: No further questions.

Mr. Frisbie: We have no further questions, Your Honor.

Mr. Hodgson: We call Mr. Joe Hall.

Whereupon,

JOSEPH HALL

was called as a witness by and on behalf of the defendants and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your full name for the reporter, please, sir. A. Joseph Albert Hall, III.

Q. What is your position with the Citizens & Southern, Mr. Hall? A. First vice-president of the bank and president of C&S Holding Company.

Q. When did you become president of Citizens & Southern Holding Company? A. About two and a half years ago.

Q. Before that, what was your position with the Holding Company? A. Well, last twenty, thirty years, I guess I had been—started out as assistant secretary-treasurer of [638] the Holding Company, and then secretary and treasurer, and vice-president, executive vice-president and president connected with the Holding Company, with the Holding Company as well as the comptroller operations in the bank.

Q. Have you been entirely in those two offices throughout your entire banking? A. Just about.

Q. And you have been there at least since before 1959; is that right, Mr. Hall? A. 1935.

Q. Let's start, Mr. Hall, with respect to some of these banks and the beginnings of their relationships with Citizens & Southern National and the Holding Company and ask you to add whatever you think you can to the development of these relationships as to what they were; and let's start with the bank out at Stone Mountain first.

Tell the Court what you know of it. A. Well, where I got in on it was with a group from Stone Mountain came to us and said that they were in trouble. This was in 1959. This was a bank that had been formed about two years previously. I didn't really have any direct knowledge of the formation of the bank beyond the fact that they asked us in the [639] comptroller's department to see if they could find them a vault door, I believe it was. [640] But in '59 they came to us and said they were in trouble. The bank was making money but losing some credit, so Mr. Lane suggested to them that the C&S Holding Company take a five-percent interest in it and suggested I go to the board and try to get somebody out there to take over the branch, since the main problem at that time was credit losses. Since this was a consumer-oriented area, we picked the man most experienced in our bank in that area of consumer loans, and we asked him if he would go there. After we solved the credit problem, the bank turned around. It was simply a thing of stop losing money from credit losses.

Q. Who was the officer who went out there at that time?
A. Walter Gibson.

Q. What did you do next with that bank? A. Well, I worked with the directors from time to time.

Q. Did you go on the board in '69? A. I went on the board in '59. I tried to sell them on the things that I thought were right for the bank. It got to the point where I felt it would be better if we had two C&S voices on the board instead of just one. I asked Howard if he would join me, and [641] I asked if they would accept both of us, and we both continued to serve as directors and did so until—I forget which one of the regulatory agencies raised the question about a regulation, whether or not we were in violation of that regulation what had to do with not being officers or directors or employees of a member bank if the two are in a contiguous area. I believe the Feds here in Atlanta interpreted that we

were now related, and we simply resigned. I believe that was in connection with the hearing we had in '68. When that took place, it was sort of a by-product of the hearing.

Q. Mr. Hall, what was your and Mr. Stark's relationship with these board members at Stone Mountain, how did you get along? A. Well, I thought we got along with them pretty well. Apparently we didn't, apparently we didn't do the job we should have done because when we talked about whether they wanted to join us permanently, they turned us down. Apparently they had found somebody else, and we just parted company.

Q. Let me ask you this: do you sit on the board as a director or as an advisor to the directors through the Atlanta area on the five-percent banks? A. Yes, the Fayetteville, Tucker, I don't know, [642] several others, and some throughout the state, as I recall.

Q. How would you compare the relationship that exists between yourself and those boards and those various banks and Tucker? A. Well, in Stone Mountain the directors were not picked by us. In Tucker, for example, as were most of the directors in the other banks, they were C&S-oriented directors. At Stone Mountain they were C&S-oriented. They were more—I think most of them had connections with other banks that were closer than any connections they had with us. The only reason I think they came to us was because of Mr. Lane. My recollection is most of them dealt with the Fulton Bank out in Decatur because we did not have any. We did not have any in Fulton out there when they probably started in the banking business. I think probably at the beginning of their business, Fulton was the closest bank.

Q. How did the stock ownership at the Stone Mountain Bank compare in stock ownership in the other five-percent banks in the Atlanta area? A. Well, in the Stone Mountain Bank it seemed to me the profit-sharing owned five percent, and

the Holding Company owned five percent. It seemed the [643] shares of stock were bought from Sonny Kellogg. I know when I went on the board I got one hundred shares from Mr. Horne. He was an Atlanta man, not from Stone Mountain. All throughout the period we were involved with them, we had trouble getting stock whenever anybody came in. When Howard or Walter Gibson came, it was a fight to get stock because nobody wanted to give it to us.

Q. How does this compare with the stock ownership in the other five percenters? A. We never had that problem. Probably in most other instances we were able to allocate the stock out and it went to enough C&S people so there was no problem of a new man coming in and getting stock for him. Maybe somebody was leaving or was in some way connected with the C&S in some way.

Q. Mr. Hall, I hand you some sheets which are sheets that have been marked in this case and identified as Defendant's Exhibit 269, with the exception of one sheet which I will hand to the clerk for inclusion, and I believe that's been identified as 334. Mr. Hall, these purport to be sheets analyzing stock ownership in these various five-percent banks, and I am going to ask you to look at the last column there and identify the percentage of the stock owned by the various categories. [644] And let's just start with the Park National Bank and ask you the percentage owned by the officers, directors and employees of the National Bank and affiliates. A. 18.31%. And the officers, directors and employees of the C&S Park National, 31.34.

Q. And the total of those two is approximately how much? A. 49%.

Q. And the customers of the National affiliates? A. 38.71.

Q. And the customers of Park National and the other five percenters? A. 10.7.

Q. Do you have knowledge of whether or not a significant number of these customer stockholders were stockholders who were solicited by Hazelrig? A. I believe so. My recollection is that we made a survey of all of the stockholders and asked how many of them expected to merge when they bought the stock, and I believe we got back, as I recall, something like a 98% reply. So these were people who were solicited by Bob Hazelrig and his group, and that is how the stock was sold.

Q. Turning then to Chamblee, looking at the second page, the last column, I will ask you the same [645] question as to the officers, directors and employees of the National Bank and affiliates. A. 12.56.

Q. And then officers, directors and employees of C&S Chamblee and other banks? A. 16.64.

Q. And the rough total of those two? A. 29%.

Q. Would you say of the C&S affiliates, 29.4, and the customers of Chamblee and the other five percenters? A. 41.40.

Q. We referred a moment ago to a survey that was taken with the shareholders with respect to obtaining a consent or a desire to merge. What is your recollection of the results of it there at Chamblee? A. My recollection is that in all but five or six instances, they were in favor; this was something in excess of 95% of the people said that was the original intention, that it would ultimately be merged. When they voted on the merger, I don't think there were more than one or two individuals who didn't vote in favor of it.

[646] Q. These figures were exhibits which were submitted to the application to merge; is that right? A. Right.

Q. Turning then to Tucker, Mr. Hall, I ask you to look at the last column, which is December 31 of 1970, officers, directors, employees of the National Bank and affiliates. A. 41.48.

Q. Former officers, directors and employees of the National Bank and affiliates. A. 6.51.

Q. Officers, directors, employees of the Citizens & Southern of Tucker and other five-percent banks. A. 9.97.

Q. What is the rough total of those three? I wouldn't ask you if you had not been a comptroller. A. About 58%.

Q. Customers of National Bank and affiliates. A. 4.72.

Q. Customers of Tucker and others, five-percent banks. A. 37.32.

Q. Who was instrumental in placing these shares of stock, Mr. Hall? A. Bennett Brown, Mills Lane, Joe Hall.

[647] Q. Turn now to North Fulton Bank, Citizens & Southern North Fulton Bank at Roswell, and I ask you in the last column, which is the second page, June 30th of 1970, Category A, officers, directors and employees of the National Bank and affiliates. A. 17.82.

Q. Former officers, directors and employees of National and affiliates. A. 2.63.

Q. Officers, directors and employees of North Fulton and other five percenters. A. 25.36.

Q. What is the rough total of those three? A. 45.

Q. Customers of Citizens & Southern National and affiliates. A. 49.48.

Q. And customers of North Fulton and other five percenters. A. 4.73.

Q. Look at Sandy Springs next, which is much longer. I believe you have to go to the second page, officers, directors and employees of National and affiliates. A. 1971?

[648] Q. Yes, sir. A. Well, 10.7.

Q. Former officers, directors and employees. A. 13.1.

Q. Officers, directors and employees of Sandy Springs and other five-percent banks. A. 28.1.

Q. What is the rough total? A. 51.52%

Q. Then customers of National and affiliates? A. 24.3.

Q. And customers of Sandy Springs and other five percenters? A. 23.7.

Q. And then our most recent baby, South DeKalb, officers, directors and employees of National and affiliates. A. 46%.

Q. Former officers, directors and employees of National and affiliates. A. 2%.

Q. Officers, directors and employees of South DeKalb and other banks, five percent. A. 18%

Q. Rough total of those? [649] A. 66%.

Q. Customers of C&S National and affiliates. A. 14%.

Q. And at South DeKalb and other five percent? A. 40%.

Q. Mr. Clerk, would it be easier if these stayed all together or just the one sheet?

The Clerk: The one sheet, please.

Q. And I believe that was Fulton—National. We have talked then about Stone Mountain and its share ownership. Let's turn to the next one in chronology, Mr. Hall, Sandy Springs.

What was your direct part in the organization and operation of that bank? A. Well, working in the comptroller's department, we were responsible for the physical location, insurance, those kind—audit control, those kinds of things, and so I worked, or some of my people worked with Tommy Cook in locating the branch, remodeling the store that we decided on renting. We worked with getting insurance for them. We did about the same things we had done several years previously when the Citizens & Southern Holding Company had organized

a bank over in Augusta. We did basically the same things with them we had done there.

[650] Q. Incidentally, talking about the bank over in Augusta, whatever happened to it? A. I'm talking about the Augusta National Bank, which was ultimately merged into C&S National Bank.

Q. When was that? A. Oh, I can't remember, really. It's been——

Q. Been within the last fifteen years? A. I believe so.

Q. How were the shareholders and directors at Sandy Springs determined? A. Mainly the impression I got was that they were picked by Mr. Lane. I can tell from the list of them that they were his business associates or personal friends.

Q. Have you anything that you could offer with respect or additionally to what Mr. Lane and Mr. Starks have testified about the severe credit loss that occurred out there and resulting possible capital impairment? A. No, it's rather vague in my mind. The only thing that I think I could add is the fact that there was some question about why there wasn't a credit examination out there. I'm not sure it wasn't or not, but I do know this, that there is a requirement under law that the directors have to conduct what is called a directors' examination. This consists of a [651] verification of the assets and liabilities of the bank. It has nothing to do with an appraisal of the assets. Credit review is an appraisal, and while we now make credit reviews, we didn't at that time, and one of the main reasons was because we were not—it was not a requirement, as far as directors of Sandy Springs were concerned.

We were giving them the things that we thought they should have, plus the things they were required to have, and we subsequently found out that we needed to give them all credit reviews, and we do that now.

Q. This was not the time of change of relationship of any kind? A. No.

Q. The relationship had been the same from the beginning as it is today? A. Except that we give them more services now because as we find that they have needs, we try to fill the needs and the same thing would go with our own branches. But we find that we need the credit reviews, and we put them in our own branches. As experience of the people changes, why we have to put more or less control on them.

Q. What was your direct experience and what is your present recollection of the beginning of Chamblee? [652] A. Well, there was a gentleman by the name of Les Bailey who was chief national bank examiner here in Atlanta, which is the same thing that's now called Regional Administrator of National Banks. He had come from California. He was a branch-banking man. He was a very outspoken person. He would always chide us about why we didn't do something about the branch-banking laws, why we didn't do something about fulfilling the needs of the people in the area outside of Atlanta, and he is the guy who told us he thought that maybe a branch or bank in Chamblee would be a good idea. And also he mentioned the Belvedere area. In fact, at Chamblee, he said that he thought that would be a good place for the C&S to go. The only way we could go was with a five-percent interest.

We took his advice; we went along with his advice, and we got together with this group at Chamblee. We got together also in a group at Belvedere. Unfortunately, the gentleman passed away before he could approve the application, so that when the applications were submitted to the Comptroller of the Currency, they turned down the branch.

Q. Of Chamblee? A. Of Chamblee; turned down completely the one at Belvedere. But we did get the bank at Chamblee and [653] about—I don't know, two years, year or two years later, we got permission from the Comptroller of the Currency to open

a branch of the Chamblee Bank on Buford Highway as he, as Les Bailey has originally predicted was the thing to do. The Belvedere location, it was some four or five years afterwards.

[654] Q. I will come to the Belvedere later. I am taking these chronologically and I am trying to keep them in sequence. With respect to Chamblee, Mr. Hall, what recollections do you have on the comptroller's office with respect to buying and warehousing land for a premises there? A. I remember working with Hubert L. Harris. He went out there to pick a temporary location. We rented a storefront, I believe on Peachtree Road. It runs along the side of the railroad tracks. It seems like we got a teller counter from some of our old banks somewhere and fixed this thing up temporarily. I thought we did a pretty good job, and inexpensively. We began to look for a permanent location, and we ultimately decided upon Peachtree Industrial Boulevard.

Hubert came back to us and said we needed a little more space, and we talked to the people who owned the property next to it to see if we could use part of it. We bought it and added it to what the Chamblee branch originally needed and held the rest of it, which was ultimately disposed of with the approval of the Chamblee bank.

The C&S Holding Company bought the original land and held it for the Chamblee bank. They then held onto the unoccupied portion until a purchaser was found who was acceptable to the Chamblee bank, [655] and we sold to that purchaser.

Q. What recollection do you have with respect to underwriting salaries at Chamblee? A. We paid Hubert Harris for six or eight months for two reasons. One to help get the bank on its feet and, secondly, because we had to get the bank's profit-sharing plans formally approved. We didn't want to lose any continuity to the profit-sharing, and it was easier to keep him on the bank payroll.

Q. What is your recollection of how the Tucker relationship came about? A. Well, Tucker was a place that needed a bank. For a long time, Cofer had a bank out there which was being operated really as an adjunct to his lumber supply business. I remember going out to Stone Mountain as a director and would go by Belvedere and my mouth would water. That was going to Stone Mountain. And on the way back, I would go through Tucker and my mouth would water going through Tucker. These were two areas that needed a progressive bank.

Somebody else obviously felt that way, too, because another group got together in Tucker and made an application for a bank charter. Mr. Cofer realized he wasn't going to be able to compete with them; he either had to give up his lumber supply business or [656] give up the banking business or get somebody to run the bank. He decided on the third, and he came to Mr. Lane and asked him if we would be interested in trying to run the bank. He didn't think his company could compete with the new bank.

Of course we accepted, and we bought 80% of the stock and put it in the hands of the C&S officers, directors and employees. We changed the directors, and I think we named three or four new directors to the board. Bennett Brown was with the board as a representative of the C&S Bank, and again, later, when Bennett left to go to Augusta, I went to the board. And it's been a very good relationship. I think it has grown from \$3,000,000 to now where it is a \$35,000,000 bank.

Q. Did you warehouse any land for this bank? A. Yes, when we were discussing acquisition with the Superintendent of Banks, we talked about the area that looked like to him might be a good place for a branch. I went along with Bennett to look at it with him and I thought after I saw it the first time that he had bought a pig in a poke, because it was the biggest hole I ever saw in my life. We had already bought it, and I think it was about two and one-tenth miles from the main office of

Tucker, and the law only [657] allows you to go two miles. But, fortunately, they put the expressway right in there at the two-mile mark, so the Superintendent of Banking allowed us to technically exceed the law by about one or two-tenths of a mile. We bought it and held it in the Holding Company until they were ready to put the branch in.

Q. Did you help Tucker with respect to any of its capital needs? A. It seems we in the comptroller department worked with any of the five-percent banks with respect to capital problems. We would counsel them as to what we thought was the best, a straight note, a convertible or a debenture or straight capital. I believe that we got a debenture out there in Tucker.

Q. Okay, now let's go to Belvedere. What is your recollection of that? A. In about 66, it seems to me, we came back and got a group of people together, men, and made application for a bank there at the corner of Columbia Road and Memorial Drive.

This time we went to the Superintendent of Banks and we got a favorable reaction from him and we were able to open that bank on the corner. My recollection is Celeste Dupree and Bill Jones worked on picking the directors and stockholders. We operated [658] in that location for quite some time, and then after that I believe we moved maybe a block or so away because it really was very congested. It was not the best location. While it was very visible, it was not the best in the world for getting into and out of, and as it got bigger and subsequently merged, I think was sort of really an important point to us. We maybe misread the sign, but this was a bank that asked to be merged, I believe it was in '70 or '69, and we asked that it be allowed to be merged in with the bank.

They asked for an opinion letter from another agency and the Justice Department. The Justice Department, I don't know what the exact words were; it's somewhere in one of these exhibits. The Justice Department felt this was no more than a

corporate reorganization; that this had been a branch bank, that there was no difference between this and a branch bank, and therefore there should be no lessening of competition.

We bought this bank and operated it as the rest of the five. We thought what we had done was right and that we would be able to merge. That is why we took an active interest in getting the bank, because we felt the position was that these banks could be merged.

[659 thru 662] Q. You did not make the effort with the other five percent banks in 1969 that you did make in '71? A. We did not merge them at that time. The only reason we could merge Belvedere at that time was because of a change in the definition of a village, as far as the state banking law was concerned. By the change of definition, we were able to bring in the banks in Avondale and the Belvedere bank, which was defined as a village. Therefore one could be the branch of it.

Mr. Hodgson: Judge, I have finished a section of the testimony related to these. There are some general matters I wish to cover with the witness which will take maybe fifteen to twenty minutes, so now might be a good time to break for lunch.

The Court: We will now recess for lunch and resume at 1:45 p.m.

(Whereupon a lunch recess was had.)

[663] Direct Examination (continued)

By Mr. Hodgson

Q. Mr. Hall, will you resume the stand, sir.

Mr. Hall, can you tell the Court what steps were taken, what activities were engaged in to keep the various banking regulators informed of what was going on? A. Most of these banks were, that we were involved with, I guess, right now are state non-member banks and as such, there is a provision in, I be-

lieve, in the law or maybe it is one of the Superintendent of Banks' regulations, I believe it's FDIC regulations, that you have to keep them informed of changes in ownership. Of course, on a new bank, they know all about it.

We talk to them quite frequently, the Superintendent of Banks, the FDIC, Federal Reserve, the Comptroller of the Currency. I think every one of them will tell you that they are thoroughly familiar with the operations of all our five percenters.

Q. You say you keep in touch, tell the Court, if you don't mind, how you keep in touch with the Commissioner of Banking and Finance, who was formerly known as the Superintendent of Banks, State of Georgia. A. Well—

Q. As a routine matter. A. I would guess that we call on them once every [664] couple of weeks, that I remember an instance within the past two years where he asked us if we would not, if we would ask the people in the five per cent banks to stop coming to see him, that he was tired of listening to their stories as to what they wanted to do when he felt that we could tell them things that would be helpful without—that would be questions in his mind without having to send them back. And we told everybody at that time and every one of the associate correspondents that we would appreciate it if they would not contact the Superintendent of Banks any more about any matters without talking with either me or Rountree's Youmans. It was just a matter of him not wanting to repeat something to every one of them on every application. For example, if they wanted to get in a real estate holding company, there were certain things that he knew that had to be done. He told me, he told Rountree he didn't want to have to tell ten others the same thing. He would rather that they would come to us and let us tell them.

[665] Q. Now, when you say "he", to whom are you referring?
A. Mr. Jackson at that time.

Q. Mr. W.A.M. Jackson? A. Right.

Q. Then superintendent of banks? A. Right.

Q. You said you would make calls every few weeks; did you ever otherwise contact Mr. Jackson? A. Oh, yeah.

Q. On what, for what sorts of—— A. Well, anytime anything would come up about five-percent banks or our bank or our affiliates that was under his jurisdiction, why, we would call him.

Q. How about the regional administrator for the controller of the currency, formerly the chief bank examiner, the same sort of relationship or not? A. Oh, yes. Of course, there weren't as many in the banks that were National banks. I think the only one that was involved here was Park National. And, of course, anything that was involving it, one of us talked to Joe Ream or John Gwinn or Les Bailey, depending upon the particular time.

Q. How about with the Federal Reserve Bank and Federal Reserve System? A. Of course, we, as you know, had an extensive [666] hearing at the Fed, and that thing went on for a period of about two years. It started in 19—I believe it was at the tail end of 1966, one of the things that we are required by law to do is to make an annual report. Every holding company, every registered bank holding company is required to make an annual report to the Federal Reserve Board, and it was at that—in 1966, in our report, one of the requirements of the report is to list the loans, and there were a number of loans in there listed in various individuals' names as agents. And they asked us what these agents were, and I remember telling them that this is just a separate designation of the individual, separate and apart from himself; that we just did this to facilitate the brokerage of the stock, where we might acquire the stock in a bank and then parcel it out to other people. The sellers usually wanted their money right away, and it sometimes was impossible to get the money from the ultimate buyers immediately. Usually—or not—I don't guess "usually" is the

right word either. Frequently we were able to close these things out in a matter of months. There were one or two instances where the stock was held by the holding company in an agent's name for a period in excess of a year. They wanted to know if we felt like that through these agencies we controlled the [667] banks. I told them that is a question that they would have to answer, but in my opinion, good management controls every bank, because management always sends out, in a bank, proxies to their annual meeting, and I believe in most of the cases 95% of the stock is set—is voted on by proxy, and proxy has been—the attorneys have been named by the management, and, as a result, management, in effect, controls that bank. I said I can't tell you whether this is control or not. You will have to decide it. But, as far as I'm concerned, when you go down to the bank in—

Q. Take—— A. Tucker.

Q. Take Tucker. A. That the president will send out to the stockholders proxies, and the stockholders will execute them and send them back. At the time of the annual meeting, he will have proxies for maybe 95 to 98% of the stock, and as a result he, in effect, through this is able to control the election of the board of directors and, through that, to control the bank.

Q. Now, whether or not that is the control that they talk about in the Bank Holding Company Act, I am not qualified to answer, and I don't think—it doesn't seem to me like they have ever answered it either.

[668] Q. Well, proceeding with this hearing you were speaking of, when they found the shareholdings and the names of individuals as agents, what happened as a consequence? A. Well, we finally—they asked us to come to Washington. They asked us to give them a lot of information; which we gave them. We went to Washington and spent a day there with the Federal Reserve Board. Invitations to the hearing were extended to the Federal Deposit Insurance Corporation, the Controller of

the Currency, the Justice Department and, of course, the Fed was there itself. I think everybody had a representative present except the Controller of the Currency. I don't know why he didn't—didn't accept the invitation.

We spent the best part of a day talking with members of the Federal Reserve staff, and went over in detail the relationship of the C&S National Bank and the C&S Holding Company to these banks in which we had a five-percent interest. As a result of the hearings, they concluded that they did not—or we were not in violation of the Bank Holding Company Act. They asked us, in going ahead, that when we acquired—when we had these similar situations to develop, what usually happened was that a bank would get to the [669] position of where their executive officer was maybe sixty-five, seventy, seventy-five years old, and they needed a replacement. One of the hardest things in the world for a small bank to do is keep people, so that when the senior officer leaves they have an adequate replacement. And about the easiest way I can explain it is, in a big organization you will have maybe twenty steps between the salary of, let's say, \$10,000 and \$40,000. The ten thousand being the lower officer and the forty thousand the top of the—the president of the bank. Whereas, in a small bank, you might not have but five steps, and it is very difficult for the small bank to keep, to get and retain qualified replacements because the guy that is in the No. 2 spot can move somewhere else and get a better paying job, and so he does.

Consequently, many banks, many small banks come up to the situation where they don't have a replacement for their senior officer, and this is the—these are the instances in which the banks throughout Georgia have come to us and asked us if we would supply it. [670] When we did that, we always made an offer to acquire five per cent of a stock and then to place any other stock, any other stockholders that wanted to dispose of, we would, in effect, guarantee that we would place it somewhere.

Q. At as good a price? A. We always offered everybody the same price. This is another one of the things that wherever we did this, we were sure that every stockholder was offered the same per share of sale, that they would place it somewhere. What we had been doing previously, previous to our meeting in Washington was to make a loan in the Holding Company to somebody as agent and then as the stock was sold out, it would be credited on that note. They asked us to stop this. They asked us to go to—in the future, so through some kind of a stock broker if we had to hold the stock more than overnight. They asked us also to report any of these instances as they occurred.

Q. Did you do so? A. We did so, yes. We had, as a result of whenever we did become in one of these situations, we would always notify them just by letter saying that such and such a bank asked us to do such and such. We were going to acquire so much stock and so forth, so on. It was also at this meeting that, well, one of the results of this is, I always felt and actually, the counsel, Federal Reserve [671] expressed to me, he felt like we had control. Of course, control is—I use that word very hesitatingly because it means so many different things. He had expressed the opinion that we probably controlled these banks although we were probably not in violation of the Federal Bank Holding Company laws dealing with control. As a result, he asked Congress to include in the Bank Holding Company Act a provision where a situation like this, that the bank would be deemed to be controlled by the holding company, and this is the way I look at our associate correspondents now.

Q. How do you look at them as being controlled or not controlled? A. As being controlled within the definition of the Bank Holding Company Act. We do not control the stock or voting of the stock, but as I see it, one of the provisions—one of the provisions about it is that if a holding company exercises substantial influence over the management of the bank,

it, I think it says, it's deemed to be under the control of the bank and should be classified as a subsidiary. This is one of the things that I say is one of the distinguishing characteristics of an associate correspondent. It's one of the banks that would be classified as a subsidiary under the Bank Holding Company Act.

Q. Mr. Hall, going back to your keeping the [672] regulators informed, you got into at this Federal Reserve hearing. What was the final result of that hearing? A. Well, as I say, they said everything we were doing was all right. As far as the Bank Holding Company Act was concerned. There were no violations. They asked us, though, going ahead, to do certain things to handle any future acquisitions through a broker. Two, there was a few stocks they asked us to dispose of which really had nothing to do with the hearing. It was just a by-product.

Q. Do you recall whether or not at the outset when Mr. O'Connell, who was, I guess, he was then Deputy General Counsel with the Federal—— A. Right.

Q. —before Mr. Heckstall left, do you recall his mentioning anything about the commercial and savings merger in connection with the hearing? A. I think that there were a number, probably a number of reasons why they called—had the hearing. One was the question that came up as a result of our listing the loans in the annual report. The other is that commercial and savings bank merger in Augusta, as I recall, one of the parties, maybe it was the Justice Department, had cited the Federal Reserve on whether or not they had enforced the Bank Holding Company Act. Maybe we were in violation of the Bank Holding Company Act, when we originally [673] acquired the interest in Commercial Savings Bank in Augusta.

Q. Was that bank eventually merged? A. It did merge, yes, we merged it with Citizens & Southern National Bank in, I believe it was 1968. I believe that's right.

Q. Without any problems? A. No, no problems. No.

Q. Mr. Hall, in addition to routine calls and keeping in touch, you might say, with the various regulators, I presume you also kept counsel advised of what was going on, general counsel? A. Oh, yes.

Q. Legal counsel. A. Yes.

Q. Let me ask you some opinioned questions, Mr. Hall. From your experience in this position, how would you compare a definition in the Citizens & Southern Bank and system, the relation between that bank and an ordinary correspondent in relationship with one of these banks you call a correspondent or associate correspondent? A. Well, I say that there are three classifications. The easiest, simplest way for me to say it is that there are three different groups of banks. There is a correspondent bank, there is a super-correspondent bank and there is an [674] associate correspondent. Now the correspondent is a regular bank, just a regular correspondent, just like everybody else everywhere has. The ones I call super-correspondents are ones that get these extra services that we offer them, but which we do not feel will, which have not committed themselves to being interested in merging with us at some later date. And the correspondent, associate correspondents are the ones that receive all the services and we have also got some kind of understanding with them that if the law ever allows it, they will merge into the Citizens & Southern group, if possible. So, it's really fairly simple in my mind because that puts in the classification of super-correspondent banks like Woodstock and Cartersville and Fayetteville and Seynoia, some of the places where there is a single large block of stockholders and who have not expressed a wish to become a part of the C&S Bank at some point in the future.

Q. Now you have mentioned two elements then. One is mutual intention, if possible, to merge? A. Yes.

Q. Another related to another block of stock? A. Yes, as far as correspondent associates are concerned, I believe there are

four elements that seem to me to be present. Number one, there has to be a small, no large block of stock that's held by any one individual [675] or group of individuals. The large stock has to be owned by the Citizens & Southern Holding Company, which is 5%.

Then there has to be an understanding that if and when it is, becomes possible, that this bank will merge into the Citizens & Southern family bank, then there has to be a determination, there has to be—there has to be a bank which would qualify as a subsidiary under the Bank Holding Company Act. Let's see, there's one other, I can't think of it right now.

Those are, it's got to be classified as a subsidiary. It's got to be a bank that will merge with us. It's also got to be a bank which understands that we are responsible for its management, subject to the veto of the Board of Directors. I think those are the four things.

Q. Do you have an opinion as to whether or not Citizens & Southern National Bank or Holding Company, or both, have working control over the management and policies of these five banks? A. In my opinion they do.

Q. In your opinion, is it exercised? A. It is.

Q. Is it accepted? A. It is.

Q. How do you compare that with control, working control over the management and policies of the bank at [676] Stone Mountain? A. Well, there was a lot more hesitancy and a lot more delay, for example, they had a capital problem out at Stone Mountain. We talked to them about what we thought was the best thing for them. They just insisted that they didn't want to go twenty-five years on a debenture. They wanted a five year debenture. I never could convince them that it was to their advantage to go ahead and take a twenty-five year one.

When we did the same with Tucker, we had no problem at all. They immediately accepted exactly what we recommended. I

think the way the name got on at that bank, Mr. Lane explained it yesterday, Mr. Cofer insisted that he be allowed to put the name Citizens & Southern on the Bank of Tucker. When they did, I informed the Board of Directors of the Bank of Stone Mountain that Tucker was going to change its name to Citizens & Southern Bank of Tucker and told them I wanted them to know before it happened, that if they wanted to use the name and they were willing to do so, we were willing to do so. By, I believe it was six months to a year later when they came back to us, they said, we would like to use the name. We said, "Okay, you can use it." Again, it was something they took their own time about doing.

[677] A. (Continued) When we had to move the—when we outgrew the quarters, the rented quarters in which we were located in the city of Stone Mountain, our research department made a study, survey of the Stone Mountain area, and decided on one particular geographic location which we thought was the best one for a bank. We recommended to them that they put the new bank on that spot. They did not choose to accept our recommendations and put it on another lot somewhere else. But it was all—I mean these are just three examples. Ultimately, they did most of the things, but it was always much slower and some of the advice we gave them was not even accepted, not that there was any hard feelings, as there wasn't, and, in fact, when they finally said that they didn't want to merge in with our bank, we went—I went back to the board and told them, if this is what they didn't want to do, it was perfectly agreeable with us to leave the situation just exactly like it was then.

We would continue the five-percent relationship as we had operated over the last, at that time I guess it was the last ten or eleven years, but apparently they had already committed themselves to some other course of action.

Q. Mr. Hall, there was some conversation [678] yesterday with Mr. Lane in which the question was asked, and I believe I

— may have asked the question in another way, why would you assume this responsibility toward these little things and take only five percent of the stock? A. Well, Howard—

Q. Well, let me ask you an obvious question, if I may, first. Why didn't you take more than five percent? A. We weren't allowed to.

Q. By law? A. That's right, except in the instance of—I believe in the instance of Sandy Springs, and at that time I believe the law was fifteen percent. However, at that time there was an indirect control provision in the law that said that officers, directors and their wives, ownership by officers, directors and their wives, would be attributed to the company and, as a result, our counsel, your associate, Mr. Henry Miller, told us that none of us could buy any stock in the bank at Sandy Springs. So the stock that we own in Sandy Springs now has all been acquired subsequent to the change in the law, and which occurred in 1960.

Q. Why did you take any stock at all? Why [679] didn't you just have the relationship without the stock? A. Well, I think there were—to my way of thinking, several reasons, the main ones being that as long as nobody else had any substantial block of stock, that made us the biggest stockholder. We were able to buy five percent of the bank in the Holding Company and five percent of the bank was acquired by the Citizens & Southern Profit-Sharing Fund, because they were also excellent investments. This meant that there was ten percent of the bank that was controlled in—effectively by us, according to the Bank Holding Company definition. Because, they subsequently attributed ownership by a trustee for the benefit of the employees to be ownership by the company itself. So we had effectively a ten-percent interest in it, and therefore we are the largest stockholder, by far, in the bank.

In addition to that, I think it said to the other people who were investing, "Look, the C&S is willing to put its money

down here." And it was just an example, an illustration that we were willing to risk our money if anybody else wanted—else wanted to, they at least knew that we were risking ours also.

Now, those are the two things that I say why we—sure, I think technically we could get—we could [680] have accomplished everything without even having a five-percent interest. I mean the pension plan could have been written that way and everything else could have, but I think these two things were reasonably important.

Q. Was there a separate and independent block of stock at Stone Mountain? A. There was. The McCurdy family, and you can attribute anywhere from thirty—I don't know, thirty to fifty percent of the bank being in the hands of—

Q. You spoke in terms of Tucker, of putting stock—in placing stock among employees and officers and so on as investments. What is the importance of friendly stockholders to you under these circumstances? A. Well, I think it is two-fold. It is a two-way street. It is really a good investment to them. I think, like Mr. Lane said yesterday about you could put a bank almost anywhere and make money, at least over the last ten or fifteen years, and that therefore we were giving the purchasers an opportunity to make a good investment. From the standpoint of the bank, it meant that your stockholders were people who knew you, who knew about you, who knew the way you did things and who approved of the way you did things. So, it just made for a more harmonious operation; that's all.

[681] Q. In your belief, does it help in the view you have of having control of these—having control of the management and policies of these banks that stock is in, as you put it, friendly hands there? A. Oh, yeah.

Q. How do you justify or would you even justify what Mr. Lane testified to yesterday and Mr. Starks this morning, that you would feel quite comfortable in recommending that a cus-

tomer of yours, for his convenience, go to a bank in which your holding company held only a five-percent share interest? A. Well, I think what Howard says is right, that we want to do what is the best thing for our customer, that actually we get more than five percent of the net profit because we also get a relationship that is certainly not unprofitable. We are getting the account of the bank, and it depends upon how much money they carry with us. It is more or less lucrative. So we really get more than five percent out of any five-percent bank.

Of course, I think all of these arrangements, these *de novo* associate correspondent banks, were all started with the thought in mind that they would some day be either wholly-owned subsidiaries or branches as a result of a merger.

[682] Q. How would you feel, if you can project your mind to such a circumstance, and this is just an opinion and an hypothetical situation, how would you feel that your relationship would be or that your actions would result if no merger approval or effort to merge these banks had been made at all? Would your relationship be continuing or would it not? A. Well, that would have to be—that would be a two-way thing, because it would have to be a bilateral agreement, bilateral decision. Both sides would have to agree. But from our sides, I think we could say that we would continue it, and I think the evidence of the answer is what we told them at Stone Mountain. We would be willing to leave the thing just like it is. We don't try to merge it, just go ahead with a five-percent relationship. They didn't accept—didn't decide to accept that, but that was our offer or our position I think has already been demonstrated, that we would just go along just like—like it had been. But I must say that seems to me to be an impossible situation, because I don't think there was ever any thought in mind of operating that way permanently. We just felt that the minute it was possible to do so, the banks would be merged in some way, consolidated or something.

[683] Q. When you include blocks of stock in your definition of correspondent associate, you are talking about blocks of stock and the importance of your five percent, none being greater than yours. Where do you place the president of these banks in that computation? A. The guys that were brought up by us, and if we want him I would say that he would stay with us, and therefore I would say he would be just as much on our—in our group as would my stock.

Mr. Hodgson: No further questions, Your Honor.

Cross-Examination

By Mr. Sims

Q. Mr. Hall, some of the questions I ask you might appear to have been asked before, but I am just trying to clear up a few areas. First of all, I would like to make clear—you said you had been with the C&S Holding Company for twenty or thirty years? A. Well, that's right.

Q. Is that correct? Is that since the time C&S Holding Company was established? A. No, the C&S Holding Company was organized in 1928. Actually it was originally started—I think there was a capital subscription as to the bank and [684] \$400,000 of it was allocated to the formation of the Holding Company, and the stock of which was held in trust for the benefit of the shareholders of the bank. Then here, oh, some ten or fifteen years ago, that stock was distributed by the shareholders to the bank, so the bank actually owns the Holding Company, and it is one of the few arrangements in the country like that.

Q. All right. Now, you have been—have you been with any other banks other than C&S? A. No, sir.

Q. All your banking life has been with C&S? A. Been real lucky.

Q. Have you been—would you describe your activities with C&S in relation to the establishment of the correspondent associates, the acquisition of five-percent interest in various banks throughout the state, the attempts up to the present day to merge, some of which have been successful in the past? Could I assume that you have been involved in those activities right along? A. Well, involved, or knew about what was going on?

Q. Would it be not fair—would it be fair to describe your role as a supervisory or coordinating role in that effort? [685] A. In some areas. We all work together in the C&S Bank and I think that is one of our—the secrets of our—what little success we have had, is that everybody does anything they want to, and everybody gets in everybody else's way, and we are all interested in doing the job, which is supplying the best type of banking service we can supply to the State of Georgia.

Q. Based on your experience in banking, Mr. Hall, who are the policymakers in the bank? A. Mills Lane.

Q. No, no, not just the C&S Bank, in a bank, who are the policymakers in terms of roles, officers, directors? A. It all depends on the way a bank is run, as I see it. And it all depends on whether the directors are groups who are sitting there to veto the actions of the management or whether they are a group who actually run the bank. In all of our banks, and in any bank that we have anything to do with, we have a very positive understanding that we know more about running a bank than the directors do. And that if you don't want to do it this way, well, let's don't get together; let's stay apart. But if you want us to help you with the bank, you have got to understand that we believe that we know how to run a bank. Just like, and it is [686] a very simple thing to explain to a director, because you say to the man who runs a drugstore, "We know nothing about nothing about running a drugstore, so you run the drugstore". You know nothing about running the bank, so we run the bank. You don't like the way we run the bank, you tell us and we will get out.

[687] Q. Okay. Now taking Citizens & Southern National Bank as an example, and would you say the policymakers or maker, C&S National Bank, is or are the officers or the Directors of the bank? A. I can only, yes, and I think the Directors, I don't mean—by saying this, I don't cast any aspersions upon the Directors, I think they themselves know that they don't know the problem of making installment loans, the problem of soliciting accounts, the problem of recruiting people. These are the things that management knows about. These are the things that management should do. We use our Directors more as a review board and our Directors' meetings consist primarily of informing the Directors of what is going on and what we are trying to make go on in the future. But, definitely in our bank, the Directors do not set the policies, they might veto them.

Q. In the time you have been associated with the Citizens & Southern National, have there been any disagreements between management and Directors? A. Let's see. The only one I can remember was when Howard Starks got that logo and we made the mistake of asking all the Directors before we started using it, whether they liked it. They, as well as I, didn't like it. So, subsequently, we had to go back to them and after about six months, we finally got them to accept it.

[688] So, I think that was somewhat of a lesson. That's the only thing I can remember that we have been in disagreement about because the rest of the things we always, I have always gone ahead and done or have said we are planning to do this and I don't remember them ever saying "Don't do that." There may have been something else.

Q. You said that, that management sets the policies of Citizens & Southern National Bank, but the Board of Directors might, or has the capability to veto; is that a correct statement? A. I think so.

Q. You have been a Director on several banks at one time or another, have you not? A. Yes.

Q. Are Directors of interstate or national banks required to take any oaths? A. I believe they are.

Q. Do you know what that oath consists of? A. No, I don't.

Q. Let me read to you, Mr. Hall, out of the United States Code, Section 73, Title 12. "Each Director, when appointed or elected, shall take an oath that he will so far as the duty devolves on him, diligently, honestly administer the affairs of such association and not knowingly violate or willingly permit to be violated any provisions [689] of this chapter and that he is the owner in good faith in his own right to the number of shares of stock required by that chapter."

Then it continues, what does that mean to you? A. It would mean to me just exactly what our Directors are doing in allowing us to run the bank.

Q. When you were on the Board of Directors, of any of the banks that you were on, I believe you said you were on Stone Mountain at one time and some others around the state of Georgia. Did you at any time have any personal disagreements with any of the activities of management of those banks? A. I am sure I must have.

Q. But you don't recall any specific instances? A. Yes, at Stone Mountain, I didn't agree with the way they would go, wanted to go with five year debentures instead of the twenty-five years debentures.

Q. Was that suggestion offered by the management of the bank? A. It was offered, that's right. Offered by the management of the bank.

Q. And the Board of Directors would disagree with the management? A. That's right.

Q. And that suggestion was not implemented? [690] A. That's right.

Q. If I could get you just to help me out a little bit on these terms. A. You don't need any help.

Q. I wish you were right, Mr. Hall. Now we have got several species or at least some species of banks running around, running around in this case. As I understand it, there are some banks that are correspondents. Now some banks are super-correspondents, correspondent associates, branches, affiliates, subsidiaries. I guess there are just banks after that. The banks in which you own a majority interest in terms of stock, what do you call those banks? A. I call them subsidiaries, fully-owned subsidiaries. No, not even wholly-owned. Subsidiaries.

Q. You just call them subsidiaries? Are those banks in which you own more than 50% of the voting stock? A. That's right. That's right.

Q. Now the bank in which you own less than 50% of the voting stock, I assume from listening to the testimony over the past couple of days, there aren't any banks between five and over fifty; is that correct? You either own five per cent or own fifty? A. I don't think there are now. That's right, there are none now.

[691] Q. Those banks in which you own five per cent of the stock, you call—— A. Some of them we call associate correspondents, some of them I call super-correspondents.

Q. Okay. Do your subsidiaries have Board of Directors? A. They do.

Q. Have you ever served on the Board of Directors of one of the subsidiary banks of Citizens & Southern National? A. I don't believe so.

Q. Have any officers of Citizens & Southern National ever served on those boards? A. Yes, we had, have one on every one of them, whoever is responsible for that area, the bank in that area serves on the Board of that bank. For example, Dublin, in Dublin either Bennett Brown or Bill Mathis, one, is on that Board. That is the way it goes on all of them—majority owned banks.

Q. If I understand correctly, there are three banks in Fulton and DeKalb County you would classify as subsidiaries? A. There are in what counties?

Q. Fulton and DeKalb Counties. A. I believe there are six; aren't they?

[692] Q. I'm talking about—— A. You are talking about subsidiaries, about the way, you are talking about subsidiaries as defined under the Bank Holding Company Act.

Q. I'm talking about how you define it. A. Fulton County, there would be Fulton-DeKalb, there would be Emory, East Point and Avondale, that's right.

Q. Are there any officers of Citizens & Southern National which sit on those Boards? A. Yes, I believe.

Q. Today? A. I think so.

Q. You don't sit on any of those boards? A. No, I do not.

Q. To your knowledge, were officers of C&S National sitting on those boards at the time that you had the trouble with the Fed over the officers of Citizens & Southern National being on the Boards of some of your five per cent banks? A. Yes, there were, not the same people, but there were other people.

Q. Now as I understand your testimony correctly, you said that the Feds, I believe I may not be correct on that for one reason or another advised you to remove your Citizens & Southern National offices from the Boards [693] of the five per cent banks in Fulton and DeKalb Counties; is that correct? A. Did I say that or did Howard?

Q. I thought you did. A. That's true they did, that's right, I believe it was sort of a side issue as a result of the hearing. It came up about the same time as the hearing.

Q. They did not then, I take it, just by implication, advise you to remove your officers from the Board of subsidiary banks?

A. It seems that there is an exception. I think the thing read

that where 50%, where the stock—where the same stockholders owned 50% or more of one bank and also owned 50% or more of another bank, this is exempt from the provisions of Regulation L. I believe Regulation L is the equivalent to Section 8 of the Clayton Act.

Q. Do you know what purpose is behind Section 8 of the Clayton Act and regulation L? A. No, I don't.

Q. I take it after, you testified that after the Fed asked you to remove these, you did remove these Directors rather promptly? A. Yes, each one ceased to be full Directors and continued in the capacity of advisory Directors.

Q. Did I hear you correctly when you said that [694] technical change didn't make any difference in their function? A. I believe Howard said that. I would agree with it completely because at Stone Mountain, I was no better off as an advisory Board member than I was as a member of the Board.

Q. So what it boils down to really, was you simply didn't cast votes? A. That's right, and this we discussed with the supervisory authorities. They acknowledged that, too, that was why we have no real quarrel with them. We are perfectly happy to do it that way.

Q. Did the fact you were able to cast votes prior to leaving those Boards really matter to you? A. It didn't mean anything.

Q. Now, going back to your distinction between correspondent associates and super-correspondents, would both—would banks fall in both of those groups? Would you own stock in banks falling in both of those groups? A. Yes.

Q. Do you know how many banks in the State of Georgia, just to pick an area, that your Holding Company owns 5% of the stock in or 5% or less? A. It's about twenty, I think.

Q. Twenty in the entire state? [695] A. I am sure we have got it somewhere in the exhibits.

Q. How many of those are correspondent associates? A. I think all but about four or five. I think again if you want to identify them, you can get out the Federal Reserve Annual Report. We identify them in it as to whether they were in effect super-correspondents or associate correspondents.

Q. The best I can do for an annual report is 1969. Has there been any substantial changes since then? A. Oh, yes, because I don't believe the Bank Holding Company Act of 1970 had not been passed and therefore, there was not the description or definition of what a subsidiary was.

Mr. Hodgson: I may be able to help you. I think Mr. Sims is talking about the bank's own annual report. I believe Mr. Hall is talking about the annual report to the Federal Reserve Board.

Q. I apologize. You have your annual report, Citizens & Southern Holding Company, December 31st, 1969. A. Every holding company is required to make an annual report to the Federal Reserve Board. In there, we are now, we are required to list subsidiaries.

Q. Right. A. We, therefore, have to determine which ones [696] of these banks we think are subsidiaries under the definition of the 1970 Bank Holding Company Act. In my recollection, without having the thing before me is that there are four, five banks that we classify as not being subsidiaries. We footnote them and say no hearing has been held on these. But we assume these banks would be subsidiaries under, I forget the section, 2G23 or something like that, those ones that we don't identify that way are the ones that I call super-correspondents. Those are the ones like Woodstock, Fayetteville, Seynoia, Bainbridge. I don't know what else.

Q. I believe you listed over four qualifications when you described what a correspondent associate was. A. That's right.

Q. Let me see if I recall those correctly. First, no large block of stock was held by a group other than Citizens & Southern? A. That's right.

Q. The second was that there was an understanding that if possible in the future, they would merge or become a part of C&S? A. Right.

Q. The third was, has to qualify as a subsidiary under the Bank Holding Company Act? A. Right, under this one that we have just been talking about, there is—does anybody have a copy of [697] Regulation Y here?

Q. I don't have a copy of Regulation Y. I have a copy of that particular section of the Bank Holding Company Act, if that would be helpful. A. Where it deals with determination of control.

Mr. Hodgson: 2A2C, he is talking about.

A. Anyway, in there, one of the ways of determining control is whether or not the company, meaning the holding company, exercises substantial influence over, I think it says the managing policies of the bank. This is where—this is the type of control that I think we exercise in these banks that I describe as correspondent associates or associate correspondents, whatever you call them.

[698] Q. Just one second here and let me find that provision. A. Yes.

Q. Tell me, if this sounds correct, Mr. Hall. "Subsidiaries with respect to a——"

Mr. Hodgson: May I ask counsel to tell us which section you are reading from?

Mr. Sims: I am looking in your brief on page 110, it is 12(c), 1841(d).

Mr. Hodgson: D?

Mr. Sims: Yes.

Mr. Hodgson: No, sir, that is not the one he is talking about.

Mr. Sims: Let me ask him about this section then.

Mr. Hodgson: All right.

By Mr. Sims

Q. From 1841(d), and I believe this is the definition of a subsidiary or one of the parts of a definition of subsidiary: "Subsidiary with respect to a specified bank holding company means any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise the controlling influence, as determined by the Board, after notice and opportunity for hearing."

[699] That's the definition that you are using? A. No, it may be the same one, but the one I am using is the one in the section that talks about determining control, and it doesn't read exactly that way. I don't know whether—whether there is any—whether we are quibbling about words or not. I just don't want to make a misstatement.

Q. Let me have you take a look at this, Mr. Hall, study it, if you would. A. You might—the part that I'm—this is not the part, no.

Q. Well, that is from the Bank Holding Company Act, that is from the section 1841(d), which defines what subsidiaries or bank holding companies are. Reading that definition, if you would, would you consider that the correspondent associates throughout the State of Georgia qualify as subsidiaries under the Bank Holding Company Act? I realize you are not a lawyer, just reading the words. A. I believe so. I believe so, but I would ask my counsel if it were.

Q. I'm not asking for a legal—I just want as you understand it. A. I believe it is the same thing as the other, but it is put in a different way, because in the other [700] one I believe it gets at it by defining what control is, and then saying that if it is controlled, why—

Q. Have you been informed by the Federal Reserve Board that you must, in your annual reports, list subsidiaries—list as subsidiaries banks over which you have or claim to have a controlling influence? A. I believe that is part of the instructions of it; is it not?

Q. I am not sure, sir. A. I think so.

Q. I am not sure. A. I think that's right.

Q. Is this the reason you put it in? A. That's right.

Q. Now, let's take the correspondent associates and the super-correspondents, if we can, as two different groups and look at those. Do these banks receive from C&S the same services? A. I think they, for all practical purposes, the ones that I call the super-correspondents, receive the same services. Sometimes it is a little bit harder to get some of the guys to give them the same services, but usually, I beat them over the head and they will finally come around.

Q. Going one step further, then, to the ordinary correspondent, do they receive the same services? [701] A. No, sir.

Q. What kind of services don't they receive? A. Well, he had a checklist, we asked whether you were—whether you had the people from the correspondent bank division of the other banks. We asked them a series of some eight or nine or ten questions about what did they furnish with these kind of services.

Q. Is this the list that had the internal audits and that sort of thing in it? A. This is the one—yeah, and had a pool of people to leave on vacations and sickness, the audit—my mind goes blank right now, but I remember writing out a list of about eight or ten things that these banks do we don't normally do for correspondents.

Q. Would you do any of those services to the extent you can remember them, I mean to the extent you were requested by a correspondent? A. I don't believe we would, no.

Q. Then, looking at the correspondent associates versus the super-correspondents, does the management, and by that—

The Court: Let's go back to that last, the distinguishing characteristics of the list to which you referred. Was the adjective or adverb "regular and routine", as I recall it, such a regular and [702] routine audits?

Mr. Hodgson: Systematically and routinely were the words, Your Honor.

The Court: All right, I am sorry. Now, when you said no to the last question, you were putting a negative based on the systematic and routine, rather than upon the providing of the services upon request, which might not be upon a systematic and routine basis; is that correct?

A. That is a fair statement.

The Court: That is what I was interpreting.

A. That is exactly right.

The Court: So the emphasis was on that systematic and routine.

A. Right.

By Mr. Sims

Q. Let me get that clear in my mind then. Would you provide any of these services to your regular correspondents? A. We have and do.

Q. Upon request? A. We have and we do. I don't know whether we—without looking at the list, I don't remember whether we do or have provided every one of them to some particular correspondent, but we would own—see, we even do it to [703] some non-correspondents, too.

Q. You provide these kind of services to non-correspondents? A. If we are trying to get their business.

Q. I see. Sort of a sales technique? A. Sure.

Q. Going back, then, to the difference between correspondents and super-correspondents, does the management of the super-correspondents, and by management I mean Board of Directors and Presidents, have any greater or lesser authority as to the management of the bank, than the management of the correspondant associates? A. Well, I think one of the things that I said had to have in a—is, an associate correspondent, was this matter of exercising substantial influence over the management policies. This, I don't think we do in a super-correspondent, besides there being a block of stock, besides one particular individual or family or group owning a substantial block. Also, we do not exercise the same degree of influence over the management. In other words, they don't do everything we ask them to do.

Q. I think I understand that distinction. A. Okay.

Q. I am trying to get a little narrower point, perhaps. Is the authority to manage the bank, which is [704] vested in the Board of Directors and the President of the correspondent associates, any different from the authority in the super-correspondents?

A. Are you asking me about the authority of the—please say that again, I am——

Q. Well, maybe I am not making myself clear. I think that Mr. Lane and Mr. Starks, perhaps even yourself, have testified that you don't dictate or maybe even can't dictate to your correspondent associates; is that correct? A. Well, obviously, we can't dictate. At any point, the Directors can walk out, if they want to, I guess, but from a practical standpoint, we influence the decisions of the management to the point where you never have to get to dictating. We would never dictate, because if it got to that point, it would be time to separate.

Q. Well, would you say then, that the real difference between the banks which you own 5% in and call super-correspondents and the banks that you own 5% in and call correspondent associates, are the relationships with the officers

and Board of Directors that C&S National has, would that be a fair statement? A. The difference would be, number one, that there would not be—that there would be a block of stock that was owned by one individual or group of individuals which was of a significant size to where that person probably [705] could exercise effective voting control. Number two, there would be no agreement with that individual that if and when merger was possible, that they would merge.

Number three, there would be no understanding that the C&S National Bank would manage the bank subject to the veto of the Board of Directors. The only thing that would be present, I guess, would be the 5% interest, and that's all, really. Five per cent interest, plus giving them the services we give.

The Court: Let me ask him a question.

Mr. Sims: All right.

The Court: Up until the time of the problem with Stone Mountain; is that true?

A. Well, there was—the problems were——

The Court: In other words, you gave them—did you give them the limited range of services?

A. Did we give who a limited range?

The Court: Stone Mountain.

A. Yes, sir, we gave them the same.

The Court: You gave them the full range or the limited range?

A. The full range.

The Court: So they were a correspondent——

A. Well, didn't really think of it at that point. At that point, it really wasn't an associate correspondent [706] or not an associate correspondent.

The Court: Didn't have the super concept at that time?

A. It came in—that's right. I know it sounds stupid, I apologize, but that is the way it has evolved, and that is the easiest way I can explain it.

The Court: The super—Stone Mountain got everything that Chamblee did?

A. Yes, sir.

The Court: How about Hapeville?

A. No, no, that was an investment, I guess I guess must have only had a fourth.

By Mr. Sims

Q. Hapeville? A. Hapeville, basically, and was because we were competing in that market, and there was no prospect of us ever getting into that with that one. We were competing with it at the time we bought the 5% interest.

Q. If that is true, why did you buy the 5% interest? A. Because it was in trouble and they wanted somebody to help them.

Q. But this is not one of those banks which you ultimately planned to merge? A. Oh, no, sir, no, sir. We were holding it and helping them to find somebody. Unfortunately, unfortunately, [707] we weren't able to find somebody as quickly as they were, but we sent three or four people out there to interview——

The Court: Thinking back on the various banks in which you held 5%, would it be correct—a correct generalization as to the ones that you now characterize as correspondent associates, and you were with those banks from the very formation of all of them, participated in their formation, and in the ones which you characterize now as super-correspondent banks, what you call, although you do have the interest, you came upon

them at some stage after their formation and it occurred to you that they might qualify and some might and some didn't.

A. No, sir. Tucker, for example, I would classify as an associate correspondent, although we acquired an interest in it after it had been organized. We did not compete with them at the time that we acquired the interest, but nevertheless, that was a going bank. And I think we exercised the same degree of influence on the management of the Tucker bank that we do over any other right now.

And I think we did the day we went into it.

The Court: Well, normally you have someone who is approving participants, the movant in the enterprise, the dominant personality, when you start something which normally I would think would put it [708] in your category of the supers rather than the correspondent associates.

Now, if the Tucker had already been formed I would have assumed that there was somebody who was the moving genius in that organization. Did you supersede and take his or her place or what?

A. Yes, sir, this was Mr. Cofer with the Cofer family and they were running the bank, basically, as an adjunct to the lumber supply business. Then, competition came in there, somebody else saw that the bank was not really serving the community in the way the bank could, and Mr. Cofer would acknowledge that. He didn't have time to run the lumber supply business and the bank, so he was looking for somebody to come in and do a good job in his bank, that he felt he had to have, since there was competition coming.

The Court: I didn't understand Mr. Lane's testimony, although it may have been true that I missed it, that you bought out all of the Cofer family's stock?

A. We bought out 80% of it. The Cofer family retained 20% of it. I think the reason for that, they

were good friends of ours, they were a substantial family and they were the ones we wanted.

The Court: You didn't consider that a sub- [709] stantial block of stock?

A. No, we didn't then. We know that we had 60% in the hands of very friendly people, I believe that's about the percentage.

[710] Q. How many of the banks would you classify as correspondent associates that you participated in the organization of?

A. In Atlanta, Fulton?

Q. In the State of Georgia. A. I don't have a list of them.

Q. Most—— A. Oh, let's see, maybe I can put it this way. Outside of the Atlanta-Fulton, of course in Atlanta, Fulton County, would be the five that are here. Outside of Atlanta, I guess there is the one in—the one that we participated originally in the formation would be in Henry County and Dalton. I don't know whether there are any others or not. I believe all the rest of them were situations where the President of the Bank had gotten to the stage where he had to retire. They were looking for somebody to come in and take over.

Q. It's fair to say then that most of the banks you classify as correspondent associates, you did not participate in the organization of? A. Let's see, probably more of them that we classify as, as associate correspondents, probably more of them we did not start, but that will all be out of Atlanta. Most of them are from Atlanta.

Q. Now, did I understand your testimony earlier [711] correctly, and I might ask you, you have been in the courtroom while Mr. Lane and Mr. Starks have testified; have you not?

Q. You have heard their testimony? A. Yes.

Q. My understanding of that testimony is that you were the moving force in establishing the correspondent associates that

are defendants in this lawsuit; is that correct? A. Oh, yes, the defendants that are involved in this lawsuit, that is your question?

Q. Yes, sir. A. Right.

Q. Yes, sir, it is. A. That would be my description, of course; it's a matter of semantics as to what you say is the moving force. I think we were as much of a moving force as any other force in every one of them.

Q. Let me go back to this Fed hearing that's been talked about quite a bit here today and quote Mr. Lane on page 7, "In no case in the entire history of this bank have we ever gone to a community either to buy interest in a bank or to organize new ones. It's always been, the policy has always been to us as in the case where a bank had deteriorated." Doesn't that seem inconsistent to you? [712] A. No.

Q. Why doesn't it? A. I still think if a group from Chamblee came to us, that we were still the moving force to get the thing done, my recollection of it is that, as I say, the chief national bank examiner said to us, "This is a place the bank ought to go." We were looking around and we happened to find out there was another group that was interested in starting a bank at that time and I believe had been turned down and we were able to get with them, we all had sort of a handmade group already. I think to be honest, to be perfectly fair with you about the thing, you could answer the question either way, that there was somebody else was the moving force or we were. I think there was a jointly, was the way it was.

Q. Would you say that these initial acquisitions, just tell me if you agree with this statement or not, if you would. Would you say that these initial acquisitions of 5% interest in these banks were part of a plan to gain ultimate control of the banks?

A. Of what banks?

Q. The banks that are defendants in this lawsuit. A. Each individual bank?

Q. Right. A. If our plan was to ultimately merge with them, [713] would you say that that was to obtain control of them?

Q. I don't know, would you? A. You can't answer it.

Q. Your plan in all of these instances—— A. Was to ultimately merge with them because that's what—I say that's what makes it so impossible to answer about what would we do absent a merger, because that's what these things were really created for was to merge.

Q. How many of the banks, if you know, or just an estimate if you don't know exactly, in Georgia, which you have a 5% interest in, have the C&S name? A. It's those ones I call associate correspondents.

Q. All the associate correspondents? A. Yes.

Q. And nobody has your name who isn't an associate correspondent? A. I believe that's right.

Q. When you give them the name or when they take the name, whichever way it works, I assume this means that you have reached an agreement or understanding that you are eventually going to merge with them, if possible; is that correct? A. Right, an understanding. No written agreement, no formal agreement or anything like that.

Q. This is true of all the banks throughout the [714] State of Georgia? A. Yes.

Q. All the correspondent associates? A. Yes, I think so. Without looking at the list and analyzing each one of them individually, I would say yes, that's true.

Q. I believe Mr. Lane testified that having the stock of these banks placed in friendly hands really wasn't the part of the control that he was referring to in his testimony, if I heard you

correctly. I think Mr. Hodgson asked you does this help and you said yes. A. Sure it does.

Q. Looking at these charts which Mr. Hodgson had you look at on your direct testimony, most of them are divided into five categories, the officers, Directors and employees of the C&S National Bank and affiliates. Now am I correct when you say affiliates, there—do you know what they are talking about? A. Subsidiaries.

Q. The second group is former officers, Directors and employees of C&S National affiliates. A. The one you are looking at might be—

Q. I'm looking at South DeKalb, maybe that's different. I'm looking at South DeKalb right now. A. Okay, I've got it, I believe.

[715] Q. Now the third group is officers, Directors and employees of C&S, South DeKalb, other C&S five per cent banks? A. Right.

Q. This would include, this includes both correspondent associates and super-correspondents? A. It would include both of them, but for practical purposes, would be very few shares held by the one I would classify as super-correspondents, in my judgment. I think we would have to go look at it specifically. I don't believe there would be many of those.

Q. The fourth and fifth categories, customers of C&S National Bank and affiliates, customers of C&S National Bank of Sandy Springs and other five per cent banks, if you don't know, do you have an opinion as to whether or not any of those customers which own stock in your bank are also, get banking services from other banks in and around Atlanta? A. I would imagine they would.

Q. Would this be more true of the larger customers? Is it frequent for a large bank customer to get services from more than one bank? A. Sure.

Q. Do you happen to know whether or not those customers own stock in any other banks? A. No, I do not. My recollection of the way we [716] got it, this thing was a result of a hearing. It seems to me that's the way they asked us to break them down at the hearing. Probably just carried—when this thing came up, we just sort of updated the information. I believe that's right, the Fed hearing.

Q. I think you testified, or I may be confusing you with Mr. Starks or Mr. Lane again, one of the three testified, one of the problems was Stone Mountain where a lot of independent people were out there, Scotch and Irish, so on and so forth? A. Mr. Lane.

Q. Mr. Lane, yes. That is they never really felt they were part of the C&S family system; do you agree with that? A. I do, I do.

Q. Now was that one of the instances in which there was a large block of stock in one individual or group of individuals acting together? A. McCurdy's family.

The Court: What is the McCurdy family? A. Well, gosh, the more I stayed out there, the more I thought there was nothing in Stone Mountain but McCurdys. There is a McCurdy Chevrolet Company, Doug McCurdy. I don't honestly know all their relations. Mr. Evans, who is married to a McCurdy. Two McCurdy [717] sisters from whom the property was bought out there and Lou Jordan's wife is a McCurdy. Kingsley Weatherly's wife is a McCurdy. When you added them all up, my recollection is something in the neighborhood of thirty-five to forty per cent held by people who were either, had the name of McCurdy or who were married into the McCurdy family. I'm not very good at keeping up with families.

The Court: Prior to your interest in that bank, had it been operated by the McCurdy family?

A. The McCurdy family had controlling—were the controlling group of Directors. There were, I think, a majority of the Directors who have been included in the McCurdy family. So they, they controlled it through the Board, yes, sir.

[718] By Mr. Sims

Q. Now, I assume, and correct me if I am wrong, that since one of the—one of your conditions for calling a bank a correspondent associate is that that kind of situation doesn't exist, a large block of stock held in hands other than C&S. A. That's right.

Q. That that is not true of any of the five-percent banks that are involved in this litigation? A. Not to my knowledge is it true.

Q. Has it ever been true? A. Not to my knowledge, I don't believe so.

Q. I would like to go back, if I could, to the Fed hearing.

Look on Page 118. Mr. Noble is asking questions; Mr. Lane and you are both responding. I will point out which is which.

Mr. Noble asked: I mean is it true that someone had an ownership interest greater than the combined interest of C&S and the president?

Mr. Lane: That is true at Warner Robbins and it was true at Pelham.

Mr. Hall: It is true at Sandy Springs and it is true at Chamblee and Fayetteville.

A. I must have misunderstood the question. I [719] mean I really—I mean I can't imagine why it would be answered that way. I mean I can't remember any block at Chamblee, in my recollection. The largest stockholder is a druggist out there, and I believe our holdings are bigger than his.

At Sandy Springs, I don't know of anybody at Sandy Springs. so I don't know why I would answer it that way.

Q. Let me read on a little bit more, maybe tie it back in.

Mr. Lane continues his answer: and true at Hogansville. It is true at the Coffee County Bank in Douglas.

Mr. Starks: It is true at Stockbridge.

Mr. Hall: Stone Mountain.

Mr. O'Connor: These are interests unrelated to C&S?

Mr. Lane: Absolutely.

Does that help you at all?

A. No, I can't understand why Sandy Springs and Chamblee would have been included in there. But maybe somebody else can help me, but I can't—I can't recall.

Q. Let me read on Page 119, if I can. Mr. Noble is in the pages prior to this asking for a little [720] description of each of the banks and he has now gotten to the Chamblee National Bank.

Mr. Noble says: The Chamblee National Bank.

Mr. Lane: That is a bank where there is a group of citizens. There is no bank in the community, and that is at the north end of Atlanta, and a group of citizens were being put together by the Trust Company of Georgia. And I said, 'How about letting me come out and talk to you guys? I think I have a better deal to offer you.' So we met for supper one night and had a highball and I told them about the C&S benefits, and they said, 'We don't want to go to the Trust Company.' We bought five percent and they had all the stock subscribed. We probably have less affiliated interest of any kind in that bank than in any of the five percenters that started. They organized

the bank, and I said, 'Please, I am a better partner for you than the Trust Company.'

I would like to go back to a part of that quotation, if I could. 'We probably had less affiliated [721] interest in that bank than probably any of the five percenters that started.' Do you agree with that statement? A. I know that we had ten percent of that bank in the Holding Company, and the profit-sharing plan, and I don't believe anybody came anywhere near that. Any other single stockholder or group of stockholders.

Q. Well, is that all? Is that all that was meant by affiliated interest? We probably have less affiliated interest of any kind? A. Affiliated. Well, what did these show? Did these show that we had less affiliated in Chamblee than the rest of them? Chamblee and Sandy Springs, it seems to me, are the ones that we have the less—the least amount of interest in this particular suit.

Q. All right. Did you—did you know or were you aware that a man named Williams and his related interest had approximately 2,800 shares of Chamblee National Bank? A. I didn't realize he had that many. He was the druggist that I talked about. I didn't think it was that much.

Q. Do you know how many shares C&S Holding had at that time? A. No, I don't know.

Q. The number of shares, would 1,500 sound [722] correct to you? A. If it is correct, then there would also be 1,500 in the name of the profit-sharing fund, which would add up to more than 2,800.

Mr. Sims: All right. Your Honor, I wonder if we might take a short recess at this point?

The Court: All right, we will take a ten-minute recess.

(Whereupon a recess was had.)

By Mr. Sims

Q. Mr. Hall, you stated that a couple of times, I think, in answer to my somewhat repetitive questions, that one of the characteristics of the bank which you call a correspondent associate is that it fits the definition of subsidiary in the Bank Holding Company Act. A. That's right.

Q. Did you have correspondent associates before January 1st, 1970? A. We used the term before that.

Q. Was the definition you are referring to in the Act prior to that time? A. No, it isn't; no, it wasn't.

Q. Then prior to that time, you didn't think [723] that that was a necessary condition? A. Oh, I would have said it would have been one of them that the Fed had talked to us about in the hearing, and which they wanted Congress to write into the law, which is what they did. When they wrote it into the Bank Holding Company Act, because they specifically, directly told us that they were going to ask Congress to put that in the law, so that we would be deemed to control these particular types of situations.

Q. Who was it that told you that? A. Tom O'Connell.

Q. When did he tell you that? A. I don't know whether it was at the end of the hearing or whether it was a period of time after that. But since the law has come out, he has, in answer to my inquiry, did you put this in the law because of us? And he said yes, you and others.

Q. Now, you said that you were notified that you should start listing in your annual report to the Fed banks which you considered subsidiaries because of qualifying under this new language in the Bank Holding Company Act; is that correct? A. Did I say that?

Q. Is that correct? I am sorry. [724] A. No, I didn't say we were notified. I said there is a provision in the instructions for preparing a bank, for preparing the annual report for a bank holding company, which says to list the subsidiaries. Since the 1970 Act has come out, you have, therefore, got to decide whether a particular bank that you own an interest in is a subsidiary or is not.

[725] Q. Has there been any hearing by the Federal Reserve Board on that question? A. I'm sorry to say there has not.

Q. Have you requested such a hearing? A. We have requested a hearing unofficially and they asked us not to officially ask for it.

Q. I take it then—— A. Because the inference that I get is that they really don't know what to do. They have got their hands so full of other things, as I gather, that are more important than deciding whether these particular banks actually are subsidiaries under the law, under the Act.

Q. So it's fair to say that the Federal Reserve Board has not yet determined these banks to be subsidiaries? A. No, sir, I'm sorry, if I gave that impression. What I intended to say was neither of the banks, either in my judgment, fell under that definition as expressed in Regulation Y.

Q. And you list them in your annual report simply because the annual report calls for subsidiaries? A. That's right, we put a notation on there that we are listing them as subsidiaries because of the provisions and footnote the ones that are not to the effect that we don't believe they would come under the definition.

Q. Now you testified earlier that you have always [726] kept the regulatory agencies fully informed of your relationship with these banks and any activities between? A. To the best of our ability, yes.

Q. Did you also testify that when you acquired your interest in the Tucker bank that some 80% of the stock in that bank changed hands? A. I believe that's right.

Q. At the time that you acquired that interest in the Tucker bank, where did that 80% go immediately from who ever owned it before? A. It went into the hands of—I believe it was Bennett Brown's agent and Howard Stark's agent and it was then transferred, I think, within thirty days, to the final purchasers. I know we made an announcement to all of the staff, that is officers and employees, that this stock was available if they wanted to buy it. We would even finance it on a pay-as-you-go plan.

Q. You did not seek approval from any of the regulatory agencies to acquire that stock? A. I didn't think there was any approval required. The bank at Tucker, I believe as it should have done, reported to the FDIC and the Superintendent of Banks, because it was a substantial change in the ownership. I believe that they did that although I am not positive. That's what they should have done.

[727] Q. What is your understanding of why the Federal Deposit Insurance Corporation turned down your application to merge the Tucker bank? A. Because it was not a de novo situation. That was an acquisition of a going bank. And in our judgment, it was not a going bank, it was a bank that was created in 1919, as I remember, and it had only grown to three and a half million dollars, three million, something like that and after we got into it, of course, a lot of it was due to the fact that that area mushroomed right about that time, but it wasn't very long, but it was a fifteen or eighteen million dollar bank. As I said, it's now a thirty-five million dollar bank. That's over a period of about six or seven years, which is pretty good growth.

Q. The situation in respect to your bank, the relationship between your bank and Tucker bank right now today is because of the FDIC approval or disapproval, the same as would have

been the case if they had turned down all of these banks in relation to the defendants in this case; is that correct? A. That's a kind of confusing statement.

Q. You applied to merge the Tucker bank, you were turned down by the FDIC, correct? A. That's right.

Q. You still have a 5% interest in the Tucker bank [728] is that correct? A. We still do.

Q. Do you consider them a correspondent associate? A. We still do.

Q. What do you plan to do with that situation? A. I think a lot of it depends on the outcome of this suit.

Q. How is that? A. Well, if you let us go, why we would be encouraged. Maybe we could go back on the Tucker question.

Q. Where would you go back? A. We would make that decision at that moment.

Q. Would you have a choice? A. Sure.

Q. Why is that? A. Because we have both a national bank, we are a national bank and we have affiliates who are state and non-member banks.

Q. You go to different regulatory agencies for approval? A. That's right.

Q. Is it fair to say then, that you are waiting to see what you are going to do with Tucker until this case is decided? A. Yes, sir.

[729] Q. You mentioned earlier, I think, in your direct testimony something about a merger poll that was taken in connection with the application and supplement to the application? A. Well, I believe I said that in the voting on the merger, that there were only two or three individuals who voted against it in the stockholders meeting. And I also said that one of the Directors on one of the five per cent banks reminded us that when he had gone out to sell the stock, originally, he had sold it to every-

body on the basis that this bank will ultimately be merged into the C&S group of banks. And we immediately drew up a letter to go to all of the stockholders to see if they all felt that way in all of the banks. And I believe we got back about 95% of the stockholders who answered affirmatively.

Q. When was this letter sent out? This is after you filed the application? A. This was, yes, after we had filed the application and after you all had stopped it.

Q. This is after the vote, vote by the stockholders in both institutions to merge? A. Right, but the question that we asked them was did you buy it originally with the understanding that the banks would be merged, with the expectation, I believe, was the way it was worded.

[730] Q. Does each of the banks in which you own 5% interest maintain correspondent accounts with your banks? A. I'm not real sure.

Q. Would you be surprised if they didn't? A. Would I be surprised if they didn't?

Q. Right. A. No.

Q. You don't necessarily expect them to maintain correspondent accounts with your bank? A. Let's be sure we understand each other. By your bank, you mean the C&S National Bank?

Q. Yes, sir. A. No. I believe in reality a lot of them maintain accounts with some of our affiliate banks. Because we have to pay this, I almost feel like this is not to get up on a sandbox and talk about indirect taxes banks pay, because we have to put up reserves with deposits that are in the National Bank. We ask these people to keep your money with some other bank where the reserves are not required. So, in answer to your question, technically, I mean to specifically say they are under our control, but there are some of our affiliated banks where reserve requirements are zero for all practical purposes.

Q. If I understand correctly, then are you saying that all the banks in which you own 5% interest do maintain [731] correspondent accounts with other—your bank or one other subsidiary? A. That's right.

Q. Are they expected to do that? A. Well, they have got to carry there—they have got reserve requirements so they have to carry the reserve requirements somewhere. We would be kind of foolish if we were exercising management, exercising substantial influence over the management policies and didn't.

Q. Influence that one? A. Right.

Q. Right. Do you own stock in any bank outside the State of Georgia? A. We have about, Citizens & Southern Holding Company has a portfolio of about twenty-five million dollars worth of non-Georgia bank stocks. These are all investments.

Q. Do any of those banks use your bank as correspondent? A. Some of them do, some of them don't. These are purely investments.

Q. None of these are correspondent associates? A. No.

Q. Or even super-correspondents? A. No.

[732] Q. If I could just go back one minute to the Chamblee organization, have the people that you eventually organized the bank with, the group of Chamblee residents, do you know whether they had approached any other bank prior to talking to you? A. My understanding is that they had, either to whole group or part of the group had already talked to people at the Trust Company, my understanding was that Trust Company indicated either no interest or not enough interest and when we approached them, they accepted our proposal.

Q. Would it be fair, considering that, wouldn't it be fair to say that the primary interest of these local organizers was in obtaining local bank assistance from any large bank, whether C&S or otherwise? A. I would think that if they, if we had not offered to do it, they would have gone to somebody else.

Q. And in fact, they went to somebody else, even before you offered to do it? A. Yes, in which event, we would have looked for another group of people.

Q. Now you have said that some of these banks which your holding company and C&S National are involved in are subsidiaries, some correspondent associates, you have both kinds in the metropolitan area; is that right? You have [733] both subsidiaries and correspondent associates in the local metropolitan area, Atlanta metropolitan area? A. Oh, yes, subsidiaries of our bank. Yes, I am sorry.

Q. The terms are hard to follow sometimes. A. Sure are. We have majority owned subsidiaries. There are three of them in the Atlanta area and then there are six associate correspondents in the Atlanta area.

Q. Is there any difference between—is there any difference in the level of—competition between the correspondent associates and your bank as opposed to your subsidiary banks and your bank? A. I don't really think so. The way I look at the competition is that they all compete, one against each other, basically for the initial contract with a customer. After that, there is a minimum of competition because you have got to realize that the correspondent associate and national bank and affiliates or subsidiaries, all sell the same product. It's very similar to four or five McDonald stands. As I understand it, these are franchised efforts which are not owned by the same people. Yet, they don't compete against each other. By the same token, our affiliates, subsidiaries, branches and the associate correspondents, as I see it, all offer the same product and therefore, the competition between them is minimal. [734] That is why I don't see where any competition is going to be lessened as a result of this merger, because they are all selling the same thing.

Q. Let me ask you about that, they are all selling the same thing. I assume when you say that, you mean the C&S block of services? A. Right.

Q. Right. That you have described before. Now that, obviously, breaks down into numerous component parts, checking account services, etc. etc., etc. Do they all sell the same thing, these parts of the same thing at the same price? A. No, not necessarily. No, not necessarily. Some of them would be the same price, some of them wouldn't be.

[735] Q. Well, is the price of these services, in your mind, a part of competition? Does price play any part in the competition? A. I don't know. That is really a hard one to answer. I am sure it must play some, but I don't think it plays near as much as the service that is rendered by one organization versus another one. That is just my opinion. And the reason I say that, if I am not wrong, I believe, for example, a little bank out in Clarkston has an entirely different service charge schedule than the bank at Tucker. So that this doesn't really affect our relationship with mutual potential customers.

Q. Let me see if I can understand exactly what you are saying here. A. I am not very good at it.

Q. I am getting a little confused. Let's start back a little bit. What would you say are the elements of competition between banks? A. Between all banks?

Q. Yeah, Bank A and Bank B. A. Well—

Q. How do they compete? A. Well, it is the way you handle a customer, the interest you take in him, the way you handle him. [736] It is the products that you have to offer, the range of products, like charge card, which was something that whenever this was going on, that nobody else had. Things like—oh, this program that we have where you skip a monthly payment on your installment account. These kind of things.

This, to me, is what is involved in competition between banks. It is a question of which bank is the more innovative and which bank is more—gives the impression to the customer of being more interested in his problems. That is what really is a bank. It is the people in the bank.

Q. Am I correct then in assuming that you don't feel that the price charged for checking-account service, the interest rate charged on loans, the interest rate paid on savings deposits, that those things aren't really as important, as far as competition goes? A. I didn't say that. I said they are not as important as the others. I didn't mean to say they weren't important; because obviously you couldn't charge \$20 a check and expect to compete with somebody who charged something else. I mean, say, a nickel a check. But, I would think that what generally happens in the area of charges is one bank will set out some kind of schedule on the service charges, and everybody else will follow, or decide whether they don't want to [737] follow. Mostly, they follow. Banks are notorious at being followers.

Q. Well, let's take your subsidiary banks. Now, these are the ones, just to make sure we are clear on the terms, that you own a majority of the voting stock? A. Uh-huh.

Q. Who sets the service charge on checking accounts for your subsidiary banks? A. Just to be sure we understand ourselves about subsidiaries, are we talking about Avondale, Emory and East Point?

Q. That is what I am talking about, yes. A. All right. Well, then those would be set by Howard Starks or Bennett Brown, dependent upon—well, by Howard.

Q. How about loan policies and rates to the extent that those are fixed? A. Well, I am not a lending officer, and I really get over my head when I get to talking about loan rates.

Q. I was just wondering who determines those for your subsidiary banks? A. We set forth schedules, which I am sure you have seen that list the recommended rates, but on different types of loans from time to time, depending [738] upon the price of money, and these individual lending officers have to, within their judgment, lend money, depending upon whether it is—the risk involved and other things, to where they go up or down from that recommended rate. But, whether—well, go ahead.

Q. Well, just one last. How about the interest paid on savings accounts at your subsidiary banks; who would set that figure? A. We do.

Q. C&S National Bank? A. Uh-huh, Avondale, Emory and East Point?

Q. Yes, sir. Now, I think you testified earlier that part of the understanding between the correspondent associate, the banks you called correspondent associates, and C&S National Bank or the C&S Holding Company is that C&S will manage the bank? A. Uh-huh.

Q. Or, at least will influence the management. Does that management include making decision as to interest rates, service charges, et cetera? A. With the president of the particular bank, yes.

Q. Well, let me get that clear. Who, in fact, sets the service charge to be paid or to be charged on checking accounts at one of your correspondent [739] associate banks? A. Well, I think what would actually happen, and I believe, as I recall what actually happened was that somebody else decided to go—to change. I believe it was the Trust Company of Georgia, but I am not sure, decided the last time to make the last change that was made. And I don't know that anybody was—it was suggested by anybody. As soon as everybody knew that they had done it, everybody else says, "We have got to follow it. We have got to stay in line with them." None of the places that I served as a director actually discussed it, to my recollection. If it had come up while I was there, what I would have done, and which I am sure whoever was responsible for it did, was to sit down and talk with the president of that particular bank and say, "What is this going to mean to you competitively in this area where your market is. And do you think you ought to go up or do you think you shouldn't," and the decision would be made there, and you go from there. I believe, if I am not correct—well, no, go ahead.

Q. Well, if I can try to pin you down just a little bit. A. You can't pin me down.

Q. Maybe I can. Who would actually make the [740] decision, who would actually make the decision? Would it be the president, would it be the board of directors or would it be the C&S National people? A. Well, it would be the president, because here is the guy that would have come up in our organization that would have known whether we made the right or wrong decision, and when he saw what we were going to do, he would have probably followed it.

Q. But he would have made the decision? A. In the final analysis, yes, because he is the guy on the scene. He is the guy who deals with the local customer. He is really the guy who knows more about customer relations than we do, sitting down here in downtown.

Q. In a similar situation, would your branch managers have authority to make such a decision? A. They would certainly be consulted.

Q. Would they have the authority to actually make the decision? A. No, I don't think they would have the authority, but they would—their views would be given serious consideration, I would say would be an important element in the decision.

Q. Now, I think you testified just a few minutes ago that all the charges in all your correspondent [741] associate banks are not the same; am I correct there? A. I don't know, did I—

Q. Do you know whether or not, for instance, the checking account charges— A. I believe they are all the same; I am not positive.

Q. The loan rates and policies, are those identical, to your knowledge? A. Well, the ranges are similar, but not identical. If you will take a classification of—now, to satisfy ourselves, we took all the business loans in all of the five or six, whatever banks are involved in this thing, and we listed them out off the

computer, because they were all on the computer. We listed them out by amount and by rate, and it showed a reasonable range of rates, comparing each one of these six five-percent banks with the nearest C&S National Bank or affiliate, subsidiary. I don't know whether they presented it or not? I don't know, but it showed us that there was nobody—there was nobody who was just simply sticking right by the rate charge, that the individual circumstances were being taken into consideration.

Q. Let me show you, Mr. Hall, a memorandum which is marked Government's Exhibit 191. A. Uh-huh.

[742] Q. Do you recognize that? A. I believe I do.

Q. Can you tell me for sure? Can you look at it? A. I recognize it.

Q. Can you look on Page 2 of that memorandum, the last paragraph? A. Yep.

Q. Could you read that for us? A. C&S five-percent banks?

Q. Yes. A. "compete across the board with C&S National and its affiliates and with each other for all customers of all types and in all locations for all types of business. And, of course, this goes the other way, too. The same goes for banking hours, new bank office sites and locations of other facilities. There are no exceptions to this general rule."

Q. That is, to me, that sounds inconsistent with what you just said. How would you—— A. Well, I thought I——

Q. Explain that. A. Well, I tried to explain it by saying that they compete between each other for the initial contact.

Q. All right. A. Keeping in mind that the most important thing [743] is the customer to get to the bank that is the most convenient for him, that is the best for him; that is, the most satisfied customer is the best customer. So, that is the competition. Once they are there, there is no real reason to talk about competing anymore to try to get that customer away from one

other bank, unless there is a change in the customer's situation, unless he moves or goes to work for somebody else or something like that.

Q. So they compete up to a point? A. Right, they don't compete to the same extent that—they don't compete with each other to the same extent that they compete with the First National Bank or the Trust Company or the Fulton, because, again, as I see it, they got one product and the Fulton National Bank's got another product.

Q. Mr. Hall, in your mind as a banker, what is the area of most competition between banks? Would it be fair to say that the most competition between banks is in acquiring the customer in the first instance? A. I think so.

Q. As opposed to keeping him? A. I think so. Probably, yes, I think that's right.

Mr. Sims: We have no further [744] questions, Your Honor.

Redirect Examination

By Mr. Hodgson

Q. Mr. Hall, that document from which Mr. Frisbie had you reading—Mr. Sims, excuse me. Mr. Sims had you reading, what is the date of it on the front page? A. July 12th, 1972.

[745] Q. What is its stated topic? A. Anti-trust actions between C&S banks.

Q. What is the reason that was distributed? A. It was distributed at the request of the attorneys.

Q. Mr. Hall, suppose the Branch Manager of one of the national banks made a compelling case to have his rate charges or any other factors of competition deviate from those of other branches. What consideration would be given in that case? A. Well, you said compelling. If it was a compelling reason, he

would probably be listened to. I am not sure that I visualize a compelling reason.

Q. But he would be listened to? A. He sure would, I think that is the key to all of this, these are the guys that are face to face with a customer, the people that know better than anybody else what the customer wants and what he will pay for it. You have got to listen to them.

Q. And if though your separate President might have the legal power to make the final decision and would in fact, have it, if he were trying to make a compelling case and didn't get it, what is the likelihood of his changing your mind? A. Nil.

[746] Q. N-I-L? A. N-I-L.

Q. Now as a matter of fact, Mr. Hall, you had some other de novo correspondent associate banks around the state in the past, have you not? A. Yes.

Q. Would you name them? A. Yes, yes, my memory is not as good as it should be. In addition to the ones I mentioned before, what did I say before, Dalton and Henry County. We also started de novo associate correspondents in Chatham County, just outside of Savannah, and I believe two in Richmond County—Augusta. The C&S Bank, Richmond County and I believe Citizens State Bank, if I recall it.

Q. Commercial and Savings? A. Yes, but anyway, both of them were banks that were started de novo and both of them are banks that were, then were merged into the Citizens & Southern National Bank after this suit was started.

Q. Each of these banks were started de novo and spear-headed by Citizens & Southern National Bank people? A. They were exactly the same as the South DeKalb or any of the rest of them.

Q. Or Belvedere? A. Belvedere.

[747] Q. Each of the five that are the subject of this litigation, with respect to the mergers, are de novo; are they not?

A. Right.

Q. Without exception? A. Right.

Mr. Hodgson: No further questions.

The Court: You may step down.

Mr. Hodgson: I will call Mr. Dan Handley.

Whereupon,

ROBERT DANIEL HANDLEY, JR.,

was called as a witness by and on behalf of the Defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your full name for the record, please. A. Robert Daniel Handley, Jr.

Q. What is your position with the Citizens & Southern National Bank, Dan? A. Executive Vice President, Branch Supervision.

Q. How long have you been in charge of Branch Supervision? A. Since 1968.

Q. What was your job before that date? A. Prior to that, I was Personnel Director for [748] the Citizens & Southern system.

Q. When did you take that job? A. That was approximately 1963—'64.

Q. What was your job before that? A. Prior to that, I was in the Controller's Department of the bank. Prior to that, I was with the bank in Macon, transferred here in 1961.

Q. When did you start with the bank? A. 1948.

Q. Did you have any personal experience with any of these banks getting organized? A. Just one.

Q. Which one was that? A. That was known as C&S South DeKalb.

Q. Where is it located? A. On Candler Road. It was a result of a piece of property that I believe Howard Starks had mentioned earlier today in his testimony, that he acquired in anticipation of the laws being changed that would permit us to either branch or have an affiliate bank. And in our responsibilities in branch supervision, we noticed that this area was developing rapidly and probably would need a bank before these laws could come into being.

He bought two pieces of property, in fact, one where the present bank is located on Candler Road and a [749] piece at Candler Road, I-20 and Rainbow Drive located adjacent to the Candler Shopping Center.

He thought the time was right when the area needed a bank. I contacted Warren Berry, one of the Branch Managers, South Expressway office, and tried to pick those people who are experienced to a point and could take on additional responsibilities and asked him if he would like to organize for us a Citizens & Southern Bank of South DeKalb. He was excited about this opportunity. My instructions to him were to look at the area, get with some other people back in the area and get with some other people, get with some other folks in the bank to see and decide what kind of bank we might need there, to determine what organizers we would want to include in the bank and Warren, working with Don Ingram, in our branch supervision, and Mr. Skinner, who is President of C&S Bank, Avondale, and Bill Jones who was, at that time, President of C&S Bank of Avondale came up with a list of organizers that they thought would, as we like to say, would be, I think, our kind of people who had the same kinds of interest we do in banking services

and that we could work with. These people were checked out as our customers——

Q. How do you mean checked out? A. By that, I mean checked out the background of the people the best we can through the regular research [750] access to be sure that the regulatory authorities, when we go to put in an application, there would be no question about the organizers. That way, we want the very best. This list was submitted to Mr. Lane. Of course, he knew some of them, some of them he didn't know. Based on our recommendation, he approved them.

We then, Warren, I asked Warren then to think in terms of the stock distribution to limit the Directors of the bank to 500 shares a piece, that he himself would have available, 5% of the bank, that they would like to distribute in the community, customers of the bank, neighbors of the bank, in small amounts approximately 45% of the bank. The remaining stock we would like to distribute among the employees of the C&S Bank and its associates.

The stock was over-subscribed. We had to cut it back. Essentially that breakdown was accomplished.

Q. Had there been any previous efforts that you are aware of to organize a bank in that area? A. We found out that there had been. I think Warren found out that when we started stirring around out there, a group of people previously considered it and I think even approached, this I am not sure of, approached the Superintendent of Banks and he had not been willing to or encourage them to carry it any further. [751] I might say that when Warren went out there, he found that both of these sites needed banks and it was our plan and we did go to the Superintendent of Banking and get the necessary application to file for the banks and we also at the same time asked for branch applications. We thought that it was desirable to apply for a bank and the branch at the same time. I guess our appraisal of the neighborhood and area was good because at that time, either the week before we started or the week

after, we were never sure, First National Bank of Atlanta was sponsoring a bank out there that has later been merged into First National Bank of Atlanta. It was a de novo branch of theirs. We did submit after getting all the necessary data, put together by research department of the bank, the necessary data, we did submit it to the Superintendent of Banking and to the FDIC.

The Superintendent of Banks, I believe, called Joe Hall and said that we have got a problem, we've got two banks that want to get in on the same corner and I need to ask you to withdraw part of it. So, I went over to see Mr. Jackson. Warren went with me. At that meeting, Mr. Jackson said we have got this bank that's being sponsored by First National Bank and that has an application where your branch application is. We would like for you to withdraw that and if you will, we'll approve the bank. [752] We felt very strongly that the branch was also needed and we elected not to withdraw.

He subsequently did turn it down, but did approve the bank. We had the organization meeting in the bank, in our bank, C&S National Bank in one of the rooms there with the organizers, Don Ingram who again, worked in branch supervision and has worked with this bank since its inception, Warren Berry, who has since been transferred to Milledgeville to assume the Presidency of C&S Bank of Baldwin County in Milledgeville.

Currently, the bank is being run on a day-to-day operation by the Assistant Vice President under the direction of Mr. Don Ingram.

[753] Q. Of branch supervision? A. Of branch supervision. We, incidentally, have had, or have had now for a year and a half, approval of that branch that was originally turned down by the superintendent, but it has been hung up in this litigation. Because, in the approval was requirements for additional capital, equity capital, and we have recently been able to get, through

all of the legal requirements, I guess, the superintendent to change that to debt. And this probably will be opened, and those customers will be served. This, of course, is ideal. Now, it is necessary because this little bank is bursting at the seams and can't serve its customers.

Q. Mr. Handley, I would like, at this point in time, to review some areas of services, mostly within the bank, in general terms that branch supervision may or may not offer to its branches, and, in your instance, to your correspondent associates in the Atlanta area, and ask you as briefly as possible to describe the areas of services furnished here.

Accounting. A. Well, currently we do all of the accounting for—by that, the bookkeeping, the proof and transit operation, the general bookkeeping of the branches, the affiliates and the five-percenter associates, in our [754] central operations area. We pick up this work by carrier, either by a helicopter or by truck, depending on what route schedules work the best.

Q. Are these all handled in the same computer as were your branches and the other? A. Oh, yes.

Q. Other accounts in this area? A. Oh, yes.

Q. Credit, credit administration. A. All of the branches in the affiliate banks and five-percenter banks in Atlanta divide themselves off into credit review committees. That is, review committees after the fact. They meet once a week to review two things, that is, new loans that they have made as to the credit-worthiness, things that they might not have picked up in tying them up, and maybe self-criticizing what they might have done better to make it a better loan. They review those loans that have gone sour since they were put on the books.

Q. Do they have any assistance from your staff? A. Oh, yes, we have a senior credit man who attends each of these meetings, offer technical and professional credit comment and criticism. We provide for each of the branches in the banks the credit review service where we go out and will review all of the loans

[755] on line sheets, making criticisms and suggestions. And then give them back to the branch manager or the bank president and ask them to review them and take whatever corrective action is necessary.

When this is done, we, in branch supervision, go back and go out with these credit sheets to determine what helps can be done to make them better loans.

Q. To what degree do you utilize comparative performance figures? A. Extensively.

Q. Comparative with what? A. With each other.

Q. Five percenters as well as branches? A. Right, and the banks, we——

Q. What about a loan gone so bad that it needs serious collection effort? A. Well, we have, we think, a pool of people who can get in and help some. Of course, some of our people in branches and some of them in the banks have varying levels of experience. Some of them can handle situations, that is, branch managers or bank presidents can handle a certain type of credit without too much difficulty. Then there are those who don't have particular experience in a certain-type critical situation, and we are able to step in with our credit [756] people and maybe work with them, or even just take over the line itself. I don't mean take it off the books, but I mean take over the loan, as far as the customer is concerned.

Q. The collection of it? A. And trying to get collection of it.

Q. Participations. A. Well, we are constantly in participation with the banks, particularly in this area where this is just tremendous real-estate land development and commercial construction. All of our banks need this.

Q. Payroll accounts. A. We do all the payroll accounting as far as credit, too. We do this; we have in a, in our branch supervision, what we consider, I guess, as a consumer-loan expert that follows constantly the type loans that are going on in

the banks and the branches. If we detect what we think is a problem, a credit problem, he will go out and review samples of the accounts and procedures to be sure that we are not getting off-track in any of the offices and if we need some re-training of the people, pull them back in, or, if we have made a mistake putting a guy out, we put him in another spot where he can be re-trained.

Q. Now, the general, large area of personnel. [757] A. Well, personnel, of course, I think that—

Q. You were in charge of systemwide personnel? A. That is correct. And we recruit personnel in the system for all C&S banks, and we do utilize all offices for training. We get a man in that is a career trainee or management associate, as we call them; we may take one and put him out at Tucker to learn the initial banking, I mean put him at Emory. We may put him at the South Expressway; we bring him into the credit department for cross-training purposes. That is so that when we have a branch manager's job, a new branch that we will go into of the National banks or any of the affiliate associates, we look through the personnel roster of all C&S associates and officers and we attempt to pick the best man, regardless of where he is, and make this job available to him.

Q. Do you furnish any sort of emergency personnel pool? A. Yes, sir, we have a group in the branch supervision. We do—it is a constant pool—but in the summertime—hire school-teachers and this sort of thing for clerical fill-in support, and that is essentially the fill-in support, of course. If a guy at a bank has some—a lot of people out at school or what-have-you, we can send temporary officers out for help.

[758] Q. Who does the payroll for the five percenters and branches? A. Our bank payroll department, all the same.

Q. Fringe benefits, vacations, holidays, service clubs. A. Administered by the assistant personnel department.

Q. Deposit accounts, both demand and savings; are they handled likewise? A. Yes, that's right. In one building where they are all handled by the same people.

Q. Where is that? A. Well, we have two locations now. One is at Mitchell Street, and we have recently moved part of it to Northlake Mall for transportation convenience.

Q. New features of deposits and savings accounts are made available to each alike? A. Yes.

Q. What is ready reserve? A. Ready reserve is an overdraft feature that we promote, too, on approved credit, where a person can apply for, and, based on his creditworthiness, can be given a line where he can overdraw his account. It is transferred from his charge account to his checking account.

[759] For instance, if a person had a ready-reserve account at the C&S Bank of Sandy Springs, and had a ready-reserve account and overdrew at \$200, we will say, and then \$200 would be transferred from his C&S charge account to his checking account automatically.

Q. Well, tell me something about your C&S charge account. What is that? Is that Master Charge or BankAmericard? A. That is our independent charge. We are members of the—I believe, the I-Card.

Q. Interbank? A. Yes.

And, of course, this is available to anyone, obviously, other than deposit customers. We have in our bank in the Atlanta area five 24-hour banking machines that take deposits, make loans.

Q. That is your Instant Banker? A. That is the Instant Banker. We have one that is located at Sandy Springs, and the other four or five are located at branches. The attempt was to place them around where they would be available to as many of C&S bank customers as possible. Now, this is acti-

vated by a C&S charge card, I-Card holders, where their credit has been pre-approved for this sort of thing.

[760] Q. C&S charge cards issued by the C&S National Bank?

A. Yes, it is.

Q. Now, in the area of general administration of these operations, what about the making of goals and projections and objectives by these officers, branch managers? A. We believe that the way to run good banks is to encourage people to set goals for themselves, and then have another party to review them, and then periodically check them. To that end, we devised a system several years ago of setting goals. We call it the goalpost, for lack of a better identification. At the end of each year, we set goals for next year in these categories, along with forecasting the budget. And I think the goal-setting is a vehicle to set your sights on how many customers you can serve as opposed to forecasting as to how many dollars of business you will do. And we then, we, by branch supervision, I mean we review with the managers and the presidents of the banks quarterly the results of their progress as it relates to a goal. And we also make this known to their associates, by that, their branch-manager associates and presidents, competition.

Q. Do you have any appraisal of performance of [761] managers and presidents? A. We do.

Q. Other than these goals? A. Well, we do. We do that on the operating statements, that is, the return on assets, the loan-loss ratios, again, the goals of people that they serve, and also, informally, the customer service. And this is sort of an intangible thing in that we get—obviously, we don't get too many, but we get more than we want, that is, customers' complaints. When they can't get satisfaction, for instance, if a customer calls Bobby Morris, the president out at the C&S Chamblee and he can't get satisfaction or he thinks he can't, he will probably end up calling Mr. Lane or Dick Kattel or myself to step

in and see what we can do. Usually everything has been done, but this is what the customer is asking for.

Q. Now is this reflected in salaries or other compensation and rewards to the officers and managers? A. Well, I think this is the consideration that we take in reviewing the salaries of the presidents of the bank and the managers of the branches. That is the results for the year, the ability to produce a profit, to generate new business, all these things.

Q. Mechanically, though, Mr. Handley, how do [762] you affect, let's say, the president's salary at Chamblee, once you have made these appraisals? How did you do it with Mr. Morris? A. Well, I would meet—some of them were different. This one was where, once a year, in the late fall or early winter, I would go out and sit down with the president of the bank and two or three of the directors and review with them the performance of the president, and we would recommend to the board a salary based on performance for the president. And then, of course, the president of the bank knows the performance of his subordinates better, and, based on previous conversation that I would have with the president, we would come up with the figures.

Q. These recommendations inevitably followed or not? A. Yes.

Q. Describe the advisory director function that you filled on occasion. Let me ask you this, on what boards in the Atlanta area did you serve as an advisory director? A. Well, when Howard Starks moved to retail banking, we had an awful lot of things going, so it was necessary for us to spread our time. So some of the boards I don't attend regular, but I try to put in [763] appearances at the board meetings, irregularly, all of them irregularly. But there's somebody from our department that attends the meeting, of course. There are certain times when it just can't be possible, but, in addition to that, I meet with the

board members over the telephone, or we might run into each other or some other reason.

Q. All of this in addition to your constant— A. Oh, yes.

Q. —relations with the management and staff? A. Yes.

Q. How available is all of the packages of sales promotions and public relations and market research, literature that you have in the National Bank? How available is that to the five percenters? A. Automatic. By that, anything—I mean anything we have as a new sales tool, any new product, any new service.

Q. Helicopters. A. Oh, yes.

Q. Ground transportation. A. Yes.

Q. Central money vault. A. Right.

Q. Centralized purchasing. [764] A. Right.

Q. Equipment. A. Right.

Q. Security system. A. Right. Yeah, in that connection we do—with the security problems now, we, I guess, have had security problems, and we have a security department in the bank that assists—well, really, has written a security manual that is used by all of the C&S banks and branches, and is audited by our security people to be sure they are following the procedures we had recommended and set up, all the equipment that is necessary, even beyond the—I believe that is required by the F.D.I.C.

[765] Q. Blanket bond? A. Yes.

Q. Installment loan billing? A. Yes.

Q. Educational programs? A. Oh, yes.

Q. Including the law seminars? A. Yes, and of course, when we participate, not only in in-banking training, but when we use some of the management schools, Harvard, Stanford and so

forth, we have reserved for us spots, each year our educational people go through, we pick the people who can benefit most by this. We pick people, regardless of whether they are in the national bank, branches or affiliates, or five percenters.

Q. Money management? A. Yes.

Q. Supplying capital needs? A. When necessary.

Q. When you say supplied, do any of these officers, no distinction is ever made as to whether they are five percenters, national or affiliates? A. No.

Mr. Hodgson: He is your witness.

Cross-Examination

[766] By Mr. Frisbie

Q. Mr. Handley, your testimony sounded an awful lot like the affidavit I saw with your name attached to it at one time, so I could follow it very closely. Which banks come under the supervision of the branch supervision department now? Which categories of banks? A. Well, in that connection, it is the branches in Atlanta, that is the City of Atlanta and recently, those that might have been organized in DeKalb County. The five banks that I guess are in question here today, Tucker, The C&S Bank of Cobb County, C&S Bank, Rockdale County.

Q. Are the affiliates also under branch supervision? A. Yes, I'm sorry.

Q. Do you have any dealings at all with what has been classified here today as regular correspondents, no ownership of five per cent? A. No, sir.

Q. Are you the person today who, in your department is the one right now that works closely with the correspondent associates? A. Yes.

Q. If, speaking very generally, if a correspondent associate bank had some kind of problem, they want to discuss with C&S National, would you—only I would say this, only in that geographical area that I identified. [767] A. Okay.

Q. I understand. So, would you be the person in that department that would be most likely to be contacted for any problems? A. Indirectly or directly?

Q. How many—excuse me. A. We have three divisions in the department and sometimes they go to a division.

Q. How many people are in that branch supervision department? A. We have three division men, we have a—we have three what we consider commercial credit men. That are men who are expert in commercial credit. We have personnel or consumer credit and we have an operations man. That's the man that has experience in the operation of tellers, all the procedures that—I didn't count them, that is it.

Q. Would be about a dozen or so? A. Yes.

Q. Do you own any stock in any of the banks involved in this lawsuit? A. Yes, I do.

Q. Five per cent banks? A. Yes, I do. Not all of them, but some of them.

Q. Did you take out any loans to purchase this [768] stock? A. Some of them I did, some of them I didn't.

Q. Did you get a preferential interest rate? A. Yes, I did.

Q. And you still own some of the stock at this time? A. Oh, yes, I do.

Q. We have gone through these services pretty thoroughly. I need to get some dates at this time about some of these programs. Can you tell me approximately when the goal post program started? A. Yes, that probably started out, this is three years ago.

Q. '69. When did the meetings that have been referred to as the Wednesday morning meetings or credit meetings, is that the same meeting? A. No.

Q. They are two separate meetings? A. Right.

Q. Credit meetings follow the Wednesday morning meetings? A. Well, for clarification, Wednesday morning meeting is a regular meeting that Mills Lane or the President of the bank, is irregular or regularly held, which with the Branch Manager, President of the Bank and [769] major department heads come down at 6:30 or 7 o'clock for a meeting. The reason many of them, for convenience sake, their credit meetings are held following this so there may be some on Thursday, some on Monday, some on Tuesdays.

Q. Do you know when these Wednesday meetings started?
A. Before I came to Atlanta, 1961.

Q. Do you know when the credit meetings started? A. Before I started in Branch Supervision. This was in existence in Howard Starks' organization. We obviously have had to expand it because of the people.

Q. Did you start the program of personal and bank performance appraisals that has been referred to? A. Personal?

Q. Was it started while you were in Branch Supervision?
A. I started the personal bank appraisals, I think probably I started an attempt to objectively evaluate branch managers and bank Presidents, I would say, yes, I have attempted to do that.

Q. Do you know when the first Director was put on the Board of a correspondent associate? A. Of——

Q. Who was an officer of a C&S National? A. Who the first officer of the C&S National [770] Bank that was put on?

Q. In period of time, do you know when that time was?
A. No.

Q. When did the customer service audits begin? A. That was something I also put in, I guess about 1968 or '69 to evaluate the customer service.

Q. Now when did the credit audit start? A. That goes back—that goes back prior to this time, 1968. That was in operation and we had that in full blast.

Q. When did you start rating the performance of each correspondent associate President? A. Well, on a formal basis?

Q. Was it started during the time you were Branch Supervisor? A. I don't think so. This is my system of evaluating.

Q. Did you ever have the power to determine his level of discretionary cash profit sharing? A. Yes, sir.

Q. You do determine that? A. Yes.

Q. Was the President aware that you have the power to do this, President of the correspondent associate [771] banks? A. I can't answer that. I would assume so. Mr. Parker did.

Q. Did you actually review the President's salaries and make recommendations to their Boards? A. To some directly, some indirectly.

Q. Was your approval required by that Board? A. I believe they expected me to make this evaluation and determine for them, based on my comparison of their performance between bank Presidents and branch managers.

Q. Did the President know you had this power or influence also? A. I would assume so.

Q. Would you think it would be reasonable to assume that this might have had some bearing on the fact whether these Presidents followed your suggestions or advice in these appraisal meetings, goal post meetings you had? A. I would think that they would probably want to do well on the criteria that we used because it obviously results in reward.

Q. When you were talking about the credit services that you have, I believe you said something to the effect that the Citizens & Southern credit review staff would [771A] analyze and rate banks, using uniform set of criteria? A. Yes.

Q. Does this have the effect of stabilizing the range within which the price is paid for loans by customers of the correspondent associates, that will be made? A. It shouldn't, this review is primarily, I would say primarily, by that I would say the review itself is 100% to determine the credit worthiness of the borrower or company and how well the loan is being buttoned up or administered, the credit review, and that we really concern ourselves with credit worthiness.

Q. But you stated also that you review the comparative performance of all banking officers in approving charge-offs, probable losses, things like that? A. I said review performance based on operating statements. The assets are made up of a multitude of in-put, that is control of expenses, ability to gain deposits so you can rent it out, this sort of effective utilization of people. I'm looking really at the return on assets, rather than any particular item.

Q. When you are reviewing comparative performance between these different persons at different bank branches, and locations, don't you think this would have the effect of stabilizing the range wherein the price is paid for loans would be made by correspondent associates? [772] A. No, sir, I wouldn't think so. I think the main thing, at least I preach this, that the way to make the bank prosperous to solicit deposits. If you get deposits, you can make money. If you can control your expenses, you can make money. Some banks, some branches are in heavy loan demand areas, some aren't.

Q. Is most income from banks, does the most income from banks normally come from loans? A. Normally.

[773] Mr. Frisbie: Your Honor, I doubt if we are going to have very many more questions for Mr. Handley. If we could have

about a five minute recess at this time, we might forestall further questions.

The Court: All right. We will take a five minute recess.

(Whereupon, a recess was had.)

By Mr. Frisbie

Q. Mr. Handley, we were talking about this discretionary cash profit sharing program. Who funds this program? A. It is funded by the various banks involved.

Q. Who does the money that—let's take the Chamblee, for instance. If Chamblee contributes X dollars into this fund, who does that money belong to? A. To the officers and employees of the Chamblee Bank.

Q. Isn't it true that the Board of Directors are the only persons who have the authority to distribute these funds of Chamblee? A. This money is and—an anticipation is made, and this money is accrued, and then it is disbursed. The employees get a fixed amount and the officers, based on performance. This money is just as the salary, the final authority, I am sure, rests with the Board.

[774] Mr. Frisbie: I have no further questions.

Redirect Examination

By Mr. Hodgson

Q. I have just one question, Mr. Handley. If a customer of the East Point Bank or of the National Bank were to be in Chamblee and wanted to make a deposit to his account in East Point or National at the location of the Chamblee office, would this be possible? A. Yes, sir, and it's frequently done.

Q. How would it be handled? A. Well, this deposit is taken. Of course, cashing of checks is no problem. The deposit poses a little additional problem. The deposit is accepted and a re-

ceipt is given, a receipt—I forgot the wording, the wording has been approved by the regulatory authority, saying the deposit is received for transmittal, but it is transmitted to the central book-keeping department where the credit is given to the person's account.

Q. The customer gets his receipt right there? A. Right.

Mr. Hodgson: Thank you, sir.

Recross-Examination

By Mr. Frisbie

Q. On that same subject, Mr. Handley, actually it is not deposited if you drop in the Chamblee—actually [775] the money is not deposited at that—if you have your account at Emory? A. Oh, no.

Q. Is that correct? A. That's correct. Actually, it is accepted for deposit at East Point, I think, as an example he used. It is accepted at Chamblee for credit to the man's account at East Point, and actually has to be transmitted.

Q. All right. So, actually, it goes by mail or by carrier? A. Carrier, our normal carrier, right, just along with our normal work, is sent to the central proof.

Mr. Frisbie: Thank you.

Mr. Hodgson: Judge, it is five o'clock. We just as soon suspend for the day, if it suits you.

The Court: Well, if we are on schedule, all right.

Mr. Hodgson: As far as we are concerned, Judge, I think we are going to meet our schedule just fine.

The Court: Suits me, too. We will stand in recess until 10:00 o'clock tomorrow.

(Whereupon, the proceedings were recessed until 10:00 o'clock A.M., September 29, 1972.)

[776]

Volume V

(Title omitted in printing)

Transcript of proceedings had before The Honorable Charles A. Moye, Jr., Judge, United States District Court, on the 29th day of September, 1972, commencing at 10:00 o'clock A. M., in Atlanta, Fulton County, Georgia.

[777] Mr. Doyle: I will call Warren Berry to the stand.

Whereupon,

WARREN L. BERRY

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. State your name for the record, please. A. Warren Landem Berry.

Q. Where are you employed; in what capacity? A. I am employed as president of the C&S Bank, Milledgeville and president of the C&S South DeKalb Bank.

Q. Would you outline your employment history before you became president of C&S South DeKalb Bank? A. Well, I had been with the C&S for, as of this December would have been sixteen years. During that time I was branch manager at the South Expressway office for a couple of years. I was branch manager previous to that at the Roswell-Wieuca office for approximately four years. Previous to that period of time, I did various things, including assistant branch manager, Stewart-Lakewood office, Cascade Heights branch. New business division, downtown Atlanta new [778] business, I was manager of that department. I at one time took an animated display

throughout the State of Georgia called "The Magic City" and displayed that to various banks.

Q. When were you first selected to be president of C&S South DeKalb, what year? A. That was in 1969.

Q. Who first selected you to be president of C&S South DeKalb? A. Well, Dan Handley approached me about the possibility of me becoming president.

[779] Q. And this was prior to the organization of the bank? A. Yes.

Q. Would it refresh your recollection, Warren, the bank was organized in 1967 instead of '69? Is that not right? A. I don't believe that is correct.

Q. Am I wrong? Okay. A. I believe it was 1969.

Q. When you were first approached by Mr. Handley and talked about the organization of the new bank, were you encouraged by him to purchase stock in the bank? A. Yes, very definitely.

Q. And did you do so? A. Yes.

Q. Was it financed? A. Yes.

Q. At a favorable rate? A. I would say so.

Q. How were the directors of your bank selected? A. Well, I got together with some of the other officers of the C&S National Bank, and also the correspondent associates and the affiliate banks, and tried to find the best people in that area. I didn't know a [780] lot of people in the South DeKalb area, and I tried to determine who would be the best people in that area with help, from such people as Don Ingram, who at that time, I believe, was president of the C&S Emory Bank; Bill Jones, who was the president of the C&S Belvedere Bank; and other individuals, including Dan Handley in branch supervision.

Q. How was the stock in your bank placed? A. We placed it—well, first of all, when it was determined that we were going to be putting up a bank in South DeKalb, I had numerous requests for stock, and we tried to allocate that stock between friends of the C&S, employees of the C&S, officers of the C&S, and we also tried to allocate some of it to the community, people in the community through the board of directors.

Q. In selecting directors and in selling the stock, were the potential directors and stockholders assured of C&S management and support of the new bank? A. Certainly.

Q. Were eventual merger anticipations discussed at that time, as and when the law permitted? A. Yes. I believe that some of the directors at our organizational meeting did bring up that possibility.

Q. When you went out after the physical facility [781] was up, did you feel like you were leaving C&S when you went to C&S South DeKalb? A. No.

Q. I have got stacked up here a bunch of guides and manuals, which, for the record, are Defendant's Exhibits 270, 298, 309, 310, 311 and 312. Did you have the benefit of these guides and manuals in your C&S South DeKalb Bank when you were there? A. Yes, I did.

Q. Do you or do you not agree that the operations and policies of C&S South DeKalb are subject to C&S National Bank's management and control through you, as you heard it testified to by Joe Hall yesterday? A. I would say that that would be true.

Q. Do you regard the common logo and all the other common identification with C&S as important to C&S South DeKalb Bank? A. Yes, very definitely.

Q. Do you find customers in your bank and other branches of the C&S Bank using the offices interchangeably? [782] A.

Yes, very often. I think also that many, many people put deposits in that bank simply because it's C&S.

Q. All right, sir. Would you tell the judge how the loan to deposit ratio has run at South DeKalb? A. Well, it's a very high lending area and as a result, the loans have increased deposits or been greater than deposits in the area.

Q. You have more loans than you have deposits? A. Yes.

Q. You have handled that through what means? A. We sold some of these loans to C&S National Bank. When you have banks, you do have some banks that are deposit gatherers, some banks that are lending banks, and by our affiliation with the C&S, we can go ahead and service the particular customers in that area.

Q. If we had not filed the application to merge when we did, would your bank's correspondent associate relationship with Citizens and Southern have continued as it has in the past, from your standpoint? A. I think so.

Q. To what extent is C&S South DeKalb facing competition from new branches of other Atlanta banks? A. Well, I would say extensively. We have several branches that are already up in our area, have [783] been established within the last couple of years.

Q. You have been president of two correspondent associates and manager of several branches of C&S. What is the difference between them?

The Court: Between the ones which he has managed, or between them and something else?

By Mr. Doyle

Q. What is the difference between managing a branch as you have managed, and being a president of a correspondent associate, as you have been president? A. I would say primarily the only difference would be that you have a Board of

Directors in the bank, in the bank that is an affiliate bank. Whereas, although at South DeKalb, I mean at South Expressway we even had a similar Board of Directors. There was a Board of Advisors in that branch, we had a Board as such. I would say there would really virtually be no difference in the two.

Q. Is there rivalry among C&S branch managers? A. I would say there was competition between branch managers, yes.

Q. In your opinion, would the granting of the mergers applied for here tend to lessen competition? A. No.

Mr. Doyle: He is your witness.

Mr. Kinkaid: Just a moment, if Your Honor [784] please.

Cross-Examination

By Mr. Kinkaid

Q. Mr. Berry, I'd like to show you a copy of a letter I received a few months ago, and ask you to notice that it's on the C&S Chamblee stationery, but take a look at it, and I would like to know whether you know of C&S South DeKalb sent out a similar letter to its customers. A. I don't recall sending out this specific letter, but I very well could have. I would have to see my letter to testify that I sent it out

Mr. Kinkaid: Your Honor, I have to apologize, we seem to be caught short-copied, if there is such a word, as this is the only one I have. That one, of course, was sent out by Bobby Morris of C&S Chamblee. Do you have any recollection of whether you sent out a letter in similar vein?

Mr. Doyle: Excuse me; can we have an opportunity to read this before examination goes on about it?

[785] Q. Do you recall sending out a similar letter to your customers? A. I do not but it could very well have happened. I don't recall it, no.

Q. I would like to show you a rather famous ad that appeared in the Tuesday issue of the Atlanta Journal November 23, 1971. I presume defense counsel is sufficiently familiar with that ad that we will not have to produce a copy for you.

Mr. Doyle: We know about it.

Q. Have you seen that ad before? A. Yes.

Q. Can you recall whether you may have—whether or not you sent a copy of that ad to your customers of South DeKalb? A. I think so.

Q. Mr. Berry, you indicated that so far as you were concerned, except for the existence of the board of directors, there was no difference between managing a C&S National branch and running C&S South DeKalb. A. I said virtually no difference.

Q. All right. What was some—since it is “virtually,” are there some that you would like to—— A. Well, there are some legal and technical differences, but as far as the customer is concerned, [786] doing business with South DeKalb or Belvedere or Stewart-Lakewood, which is a branch, or South Expressway, it doesn't make any difference. It makes no difference to them.

Q. But, I think the question was what is the difference between managing these two operations? What was the difference to you? A. Well, you have—the end result is the same. In other words, the end result of accomplishing promotion of the C&S style of banking and our way of doing business is the same. The means that go about those ends might differ because of legal technicalities, but, other than that, that would be the primary difference.

Q. Weren't there differences between being a branch manager and running South DeKalb? Weren't there differences in terms of your ability to, for example, change the service charges on your checking accounts? A. Well, I would like to think that as a branch manager that I certainly, if I had a strong feeling about service charges or any other thing, that I might very well be able to prevail in making changes.

Q. Now—— A. However, I would like to add this, that I would be very careful before I would do it because I wouldn't want to confuse the customer.

[787] Q. Now, by that, I take it you mean that if at the South Expressway, for example, you had changed your service charge and a C&S National customer who happened to bank primarily with another C&S Bank branch determined that the South Expressway office was offering a different service charge, he would be a little upset, wouldn't he? A. Well, not—I don't know about being upset. I think it would be confusing.

Q. As a matter of fact, aren't the service charges offered at all C&S National branches in Atlanta, aren't they the same? A. In Atlanta.

Q. Uh-huh. A. I think so.

Q. And isn't that also true of interest paid on passbook savings accounts?

Mr. Hodgson: Excuse me. Your Honor, I am not sure if Mr. Kinkaid is asking the witness if he knows as a matter of fact that each of these rates and charges are the same at each of these branches or if he is asking for his conjecture as to what is going on at these branches. He has not testified that he has been at all of them.

[788] By Mr. Kinkaid

Q. Well, do you happen to know? A. I don't know for a fact, no.

Q. Now, if, as a matter of fact, they were all the same, would that surprise you?

Mr. Doyle: I object to that question as pure as conjecture, if the Court please. He has already stated he doesn't know the fact.

The Court: It wouldn't add much to the record to determine whether this witness would be surprised.

Mr. Kinkaid: Excuse me, sir, I couldn't hear.

The Court: I said it wouldn't add much to the record to determine whether this witness would be surprised.

Mr. Kinkaid: I don't think it adds much to the record as to whether he thinks the acquisition at South DeKalb would lessen competition, either, but that's beside the point, perhaps.

[789] Q. (By Mr. Kinkaid) As branch manager of South Expressway, could you have increased, for example, what was the rate you were paying on passbook savings accounts? A. I believe on passbook savings——

Q. Uh-huh. A. I'm not sure what you're referring to when you say passbook savings. What do you mean?

Q. This is the accounts where someone comes in, wants to put his money away. This is not a checking account, not a demand account, he's going to put his money away. He makes a deposit and the deposit is entered into some sort of record that is usually, as I understand it, called a passbook. He has paid a certain amount in. A. We have three different kinds of savings; passbook would not be one of those. We do not give customers records books on some of our type savings. So, ask me your question again.

Q. All right. Was there any type of savings account offered at South DeKalb on which South DeKalb was paying three and a half percent interest? A. We had a regular savings account that was paying three and a half percent interest.

Q. You called it regular? A. Regular savings account, right.

Q. Now, when you were at South Expressway, if in [790] your opinion it would have been some advantage to you to pay four or four and a half percent, would you have been able to do so?

Mr. Doyle: I object to that question, being objectionable on two grounds. One is asking if in his opinion, we have not testified, found out whether it would be in his opinion, and two, four and a half percent is legally impermissible under the law. I object to it on both grounds.

The Court: Overruled.

Mr. Kinkaid: I think his, what his state of mind as to this matter is, is quite relevant, Your Honor. He has testified as to the difference between managing branches and managing a correspondent associate, and that has to raise questions of how he approached both institutions.

The Court: Well, we have the substantial record on the question so far. I think that is an area where we can continue to get new questions even if we stay in session for a month. I'd like to try to pin it down to the ones that add to the record.

Now, as I understand the record so far with respect to the five percenters, there is a unanimity of testimony among the defendants' [791] witnesses that there is very little difference between their operation and that of a branch. Now, I take it that there is inherent in those answers, and I think the witnesses express it, the thought that, of course, there are legal differences, there is a corporation there. Over here is a part of the bank. Therefore, the difference, I think, would be developed in a necessity for, say, persuasion with respect to the five percenters as opposed to that with respect to the banks, the branches. And then, if that be the case, it seems to me that the question such as you're asking would be, we could get one if, in your opinion, there should be a diversion, a necessity for a diversion

in procedure, rates, whatever is applicable to the five percenters as contrasted to the branches or the named business. Could you accomplish it? What would be the difficulty of accomplishing it? I think that is, of course, relevant to the record. I'd like for you to do it, let's get it in there once, develop it fully. I see we are going to have a number of witnesses in the same category. Let's see if we can handle it once and not go over it several, on several occasions.

That is the record, if you think that there is a—that it's not an accurate characterization [792] of it, then obviously you have got liberty to develop it further.

Mr. Kinkaid: No, I think that's really what I was trying to get to. I was going around Robin Hood's barn to get there. The main thing I was trying to establish is the difference in, the difference in operations seems to me would include whether or not the president of the associate can make these major competitive changes without being stopped by his C&S associate.

The Court: It seems to me——

Mr. Kinkaid: What, on the other hand, can branch managers do in the same regard.

The Court: Tell me if I'm wrong. The branch manager can do it because he would be, as I take it, the operating authority of the president, Board of Directors, whoever is running C&S National Bank. He has got that authority and he can do it. He may have an advisory board, still he would have the authority.

The legal authority in five percenters is in the Board of Directors, duly elected or appointed officers and the authority to make the change must come from there. Then, you have the intangibles of the trust, the confidence, the belief that C&S's [793] way of operating is the best way. He may believe that three and a half percent is better for the bank than four and a half or whatever the figure may be. He has got the legal prob-

lem to get over. I construe the testimony as saying that that has proved to be no great problem because all that has been necessary is for a good manager to exert, use his persuasive powers and explain the benefit of the C&S system, and it's just followed in due course.

Why don't we get the witness to say, give him a hypothetical, suppose he thought that there was a, that three and a half percent was too low to attract savings accounts in this neighborhood where other banks were offering whatever they might be offering. He wanted to go up a quarter of a percent. What would he do? Would he have problems? Has he run into any situations like that?

[794] Q. Well, Mr. Berry, if you had wanted to raise your regular savings account interest rate when you were at the South Expressway, what would have been the procedure that you would have followed? A. Well, I would have communicated with branch supervision, discussed the matter with them, tried to determine—I believe that they would have tried to determine from me my reasons for wanting to make this change, and I would have communicated with them to determine whether or not it would be in the best interest to do so.

Q. Now, if branch supervision indicated disapproval of this move, what would you have done? A. Well, I—that depends, really. I might have accepted that or I might have appealed it to someone else, if I felt very strongly about it. I might not have. I might have discussed the matter further. I probably would have. Unless I felt, depending on how strongly I felt on something like that.

Q. To whom would you have appealed if branch supervision didn't go along with you? A. Well, I might go to the president of the C&S National Bank.

The Court: Suppose he said no. Would you then go to your board of directors, [795] the board of directors of the five-

percent bank and say that you have been advised to the contrary from the C&S; I feel strongly about this?

Mr. Doyle: Excuse me, if the Court please. That question was directed to the time he was a branch manager at South Moreland. A. South Expressway.

The Court: I apologize.

Mr. Kinkaid: I was taking the branch first.

The Court: I apologize.

By Mr. Kinkaid

Q. Okay. So you are still branch manager and you have been turned down by branch supervision, and you are going to Mr. Lane and he says, "No, I don't care for that." A. All right, sir. All right. I would have had to comply with that. Whatever the amount of the charge was, or, if I still felt strongly about it, I could have left the bank.

Q. On the other hand—— A. Might not have eaten very well.

Q. On the other hand, now, you are at South Dekalb. [796] A. Right.

Q. And you want to do the same thing. In that case, would you have gone to branch supervision for anything? A. I certainly would have. I would have communicated with them and probably the—I would have tried to find out, tried to determine what the best thing is for the area, the same way as a branch. I would have tried to determine what—why a change is necessary and trying to look out for my area of responsibility, to be sure that we do the best job there. And I would have pursued it in that light.

Q. Yes, sir. Of course, we were setting up this hypothetical and it was——

The Court: You had determined already that it was necessary.

Q. Yes.

The Court: The basis of the question is that your analysis of the neighborhood indicated an increase in rate was necessary.

A. All right, sir.

The Court: Then, as I understand it, you discussed that rate with branch supervision.

A. I would.

The Court: All right.

[797] A. I would get the pros and cons from them, and I would rely very heavily on what they suggested and recommended.

By Mr. Kinkaid

Q. Now, if branch supervision didn't care for the idea, but you still felt strongly about it, now keeping it comparable to the hypothetical as to the branch, now at that point you still feel strongly about it; they have not been able to convince you that you shouldn't go up. What do you do then? A. Well, let me say this, that, first of all, I would give—I think that I would have to recognize that they have a lot more resources to determine what would be an appropriate amount than perhaps I would, and I am saying this to say that I would give a lot of weight to their recommendation, because they know about the cost accounting, which I do not know what it costs the bank, and this kind of thing.

They help me in this area. If we disagreed, which I think would be highly improbable, because, as I say, we are both working for the same ends, so I would say that I would probably pursue—I would probably go to perhaps Mr. Lane or Mr. Kattel and discuss it with them. If I felt like the C&S and I were not in agreement on a price, then I could go to [798] my

board and discuss the matter with them. I think the chances of something like that happening, they have never happened, and I think it would be highly improbable that they would.

Q. But, if they did, would you have been able to go to your board and, if you could convince your board that it was a good idea to make the change, could you have made it? A. I could have legally, or they might have gotten another president if, you know, I could have—certainly I could have done it, yes. If the board didn't agree, then we would have to—we would have to confront that situation.

Q. All right. Now, if your own board at South DeKalb didn't like what you wanted to do, as you say, they could have gotten a new president. Suppose branch supervision didn't care for what you were doing, now, would they have been able to get a new president out at South DeKalb? A. Well, I don't know. I mean I don't know about that. I would say this, if I felt strongly about a price in my area, that the ultimate authority would have to rest with me and my board of directors.

Q. And when you were the branch manager, if you insisted upon doing something that branch supervision [799] didn't want you to do, they would get a new branch manager, wouldn't they? A. That would be correct.

Q. Either they would fire you or you, yourself, would go somewhere else? A. That would be correct, yes.

Q. I think you indicated that you had heard Mr. Hall's testimony on this question of management control and that, as I recall, you said you agreed with it so far as your circumstances were concerned; am I correct about that? A. Yes, you are correct.

Q. I was curious as to just what your understanding of this concept is, just from your standpoint, what is this management control we have been hearing about? A. Management control would be employing the C&S style and the C&S philosophy of

banking. It would be doing what I have been raised to do since I started working for the C&S Bank, that is, trying to take the positive approach, trying to say yes, rather than no to loan requests, and this kind of thing.

Q. Is that about it? A. This is—well, no, I wouldn't say that was it. I would say it just involves a very, very broad-type [800] thing really.

Q. Yes. Well, I was curious as to where the control element comes into that situation. A. Well, you see, the C&S National Bank and I, we agree. We agree because I have been employed there and I understand why they do things the way they do. And so it is a voluntary thing; I just agree with what we do and what they recommend.

Q. Well, when you agree with someone, someone else as to what someone else wants to do, does that necessarily mean that you are controlled? Do you always think of it in that way?

A. Well, it just—in other words, I have asked for their help. I have asked for them to provide the tools to make that bank successful, and I don't see how I could be anything but receptive to what they recommended.

Q. Excuse me, Your Honor.

Mr. Berry, I think you indicated that you might have sent a copy of that ad to your customers, this, you know, thing here. A. Yes.

Q. Can you recall, if you have a recollection at all of having sent it, would that have been shortly after the suit was filed in this case? That would have been back in November last year? [801] A. I think so.

Q. Perhaps you would take another look at this letter, please. This is the Bobby Morris letter again. And you will notice on the second page that he notes that: "For those of you who are not familiar with the threat posed by this group of anti-trust

attorneys, I am enclosing a copy of a recent public service advertisement." A. All right, all right.

Q. Do you think the ad that the public service announcement he refers to here in that paragraph would have been this ad that we have been talking about on November 23rd? 'A. I think so. I am not positive, because I don't specifically remember these, but I think this would be appropriate.

Mr. Kinkaid: Thank you very much. No further questions, Your Honor.

[802]

Redirect Examination

By Mr. Doyle

Q. Mr. Berry, you are presently president of C&S Bank, Milledgeville? A. Yes.

Q. Is that a correspondent associate of C&S National Bank? A. Yes.

Q. Are the services, charges, interest rates charged and paid by that bank in Milledgeville the same as the C&S South DeKalb? A. No, sir. No, sir, we have different charges in various areas.

Mr. Doyle: All right, that's all I have.

The Court: You may step down.

Mr. Doyle: Mr. Roy Holland.

Whereupon,

ROY B. HOLLAND

was called as a witness by and on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Mr. Holland, would you state your name for the record, please, sir? A. Roy Bynum Holland, Jr.

[803] Q. What is your occupation, Mr. Holland? A. Pharmacist, owner of drug stores.

Q. Where is your drug store located? A. Two stores; one at 2003 Candler Road, one at 3290 Memorial Drive.

Q. What are the names of the drug stores? A. Holland & Knight.

Q. You are presently serving on the Board of Directors of the South DeKalb branch, is that correct, bank? A. Yes.

Q. At the time you bought your stock in the bank—you did buy stock in the bank, of course? A. Yes.

Q. And agreed to serve on the Board. Who approached you in that connection? A. Warren Berry and another officer of the bank, Tom Holmes.

Q. Was Citizens and Southern National's direction important in your decision to buy stock as a director? A. Yes.

Q. Did you expect Citizens and Southern management and direction in the bank? A. Yes.

Q. Do you rely on them now as a director? [804] A. Yes, I sure do.

Q. How important would you say Citizens and Southern is to the running of your bank today? A. We think it's very important. They furnish us with all kinds of materials. For ex-

ample, at our Board of Directors' meetings we have a very detailed report of all of the procedures, all the things that—transactions that have happened during the month, shows the profit and loss, and all of that. And it's really very helpful and we have been very successful in the bank. We just believe in the way Citizens and Southern operates.

Q. If the merger applications which are the subject of this litigation hadn't been filed, Mr. Holland, would your bank's past and present relationship with Citizens and Southern have continued? A. It would as far as I was concerned. I'd be very much in favor of it.

Q. Has Citizens and Southern South DeKalb Bank faced competition from other new branches from other banks in your area? A. Yes, we have several nearby.

Q. Have you helped solicit customers for C&S South DeKalb Bank? A. Yes.

Q. In doing so, do you make any reference to [805] Citizens and Southern? A. Yes, we do.

Q. Do you hold it out as a Citizens and Southern Bank? A. Yes, I do.

Q. Can you tell the judge and the Court how the bank has helped serve banking needs in the community where it's located? A. Well, of course, all banks are similar, but I think, the important part of our bank is the confidence that people have in it being associated with Citizens and Southern, and its being a large bank that they can offer, maybe some services that smaller banks could not.

Mr. Doyle: Thank you. He is with you.

Cross-Examination

By Mr. Stern

Q. Mr. Holland, just a couple of questions. What services do your customers need that other smaller banks can't offer?

A. The primary one that comes to my mind would be large loans, larger loans than smaller banks would be able to give.

Q. Have you ever heard of a correspondent relationship? A. Yes—you mean with other banks, other than——

[806] Q. Yes. A. Yes.

Q. You have heard of that. Aren't there loans that your bank gives that are beyond the lending limit capacity of your own bank? A. Yes.

Q. And you are able to make these loans by loan participation in cooperation with Citizens and Southern National? A. Yes.

Mr. Stern: All right, no further questions.

The Court: You may step down. Call your next witness.

Mr. Hodgson: If Your Honor please, our proposed course of the trial at this point is to have such a representative of each of these banks. We don't think it will take any more time of the Court than has been indicated by this pair. If the Court feels that this is entirely cumulative evidence, of course, we think it may be also.

We do not want to prejudice the course of the trial by failing to make these men available. There are slight differences among each of them. We are prepared to go on.

The Court: I am certainly prepared [807] to accept what has been testified to by Mr. Berry and Mr. Holland with respect to South DeKalb as completely typical of the others. If the Government counsel thinks that would be an improper conclusion, then we can go into it further.

Mr. Kinkaid: The only problem I can foresee, Your Honor, with this would be what is the time frame involved in this similarity. If we are saying that as of today all the other associate banks are pretty much the same as Sandy Springs, is one thing. It's another thing to indicate that other of the banks that have been around for ten, twelve years are also same and have been so for their entire history.

The Court: Do you know any difference, suspect any difference?

Mr. Kinkaid: Yes, I think there were some differences that are already in the record.

The Court: We sure don't need them again.

Mr. Kinkaid: True, as long as the differences are there.

The Court: With respect to the past pair of witnesses, it seems to me that there is generalized testimony which pretty well can stand as typical. If there are specialized differences the record [808] shows, certainly we can consider them.

Mr. Hodgson, are you happy with that?

Mr. Hodgson: Is the Government satisfied with this?

May we consult just two minutes, Your Honor?

We have one officer we would like to call because of some specific differences in regard to dates.

The Court: All right, you may do so.

Mr. Doyle: What we propose to do, if the Court please, is address the specific issues raised by Mr. Kinkaid as to the organization of Citizens and Southern Chamblee Bank. I call Mr. Hubert Harris.

Whereupon,

HUBERT HARRIS

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Would you state your name for the record, please, sir?

A. Hubert Harris.

Q. What is your present occupation, Mr. Harris? A. I'm retired.

[809] Q. From what are you retired, sir? A. Citizens and Southern Bank of Chamblee.

Q. How long were you employed at C&S Bank of Chamblee?

A. Twelve years and four months.

Q. In what capacity, sir? A. President.

Q. Were you there when it opened? A. Yes.

Q. What has been your employment history before that time? A. Since 1926, I have worked for Citizens and Southern National Bank.

Q. Would you outline what you have done, tell us what you have done for Citizens and Southern National Bank immediately before you went to C&S Chamblee? A. I came from Athens to Atlanta. After several moves, I was in charge of the Office at Marietta Street, Northwest office, and then the office at 140 Peachtree Street. From there, I went to Chamblee.

Q. All right, sir. Who first elected you or approached you to be president of Citizens and Southern National Bank of Chamblee when it opened? A. It was Chamblee National.

Q. Chamblee National Bank? [810] A. George McKinnon.

Q. He was then employed by whom? A. By Citizens and Southern National Bank.

Q. Were you encouraged by Mr. McKinnon to purchase stock in your new bank? A. Yes.

Q. Did you? A. Yes.

Q. Was your purchase financed? A. Yes, with C&S National.

Q. Were the members of the public aware of the Citizens and Southern sponsorship and support of your bank when it was organized? A. Yes, they were.

Q. Did you solicit sale of stock of the bank? A. Yes.

Q. Could you tell us how you did that? A. Well, this is a new community. Of course, in selling the stock it gave me an opportunity also to meet many of the individuals there. I stressed the fact that we would have the support of Citizens and Southern National Bank in all that we did there.

Q. Did you solicit the new customers for the bank when it opened? A. Yes, I used the same principle, same process.

[811] Q. Did you mention or emphasize the fact of Citizens and Southern's relationship? A. Yes, I did.

Q. I show you a bunch of brochures that come from Defendants' Exhibit 314, and ask you if you are familiar generally with these kinds of things. A. Yes, I'm familiar with them.

Q. Those are brochures that deal with various services offered by Citizens and Southern Bank? A. That's correct.

Q. Did you display similar kinds of brochures in your bank when it was first organized in Chamblee, the bank at Chamblee? A. Yes, sir, those that were available at that time, yes, sir.

Q. By that, do you mean there may have been some difference between what was available then and now? A. What was available then we displayed them.

[812] Mr. Doyle: No further questions.

Cross-Examination

By Mr. Kinkaid

Q. Mr. Harris, on the question of public awareness of your association with C&S back in what was it, 1960, when the bank opened? A. Yes.

Q. Can you recall whether or not your bank ran any newspaper ads or ran any kind of advertising campaigns which specifically referred to any association that you had at that time with C&S? A. I don't think so. In some of the ads we had a little sentence at the bottom, "Correspondent associate of the Citizens & Southern National Bank."

Q. And so far as you can recall, that was the relationship that was being made known to the public at Chamblee? A. Yes, sir, but in all that we did, we made it very clear, our relationship; for example, our stock was over subscribed and many of our customers wanted stock, so when we could not supply stock of Chamblee National, we suggested that they buy C&S National, and many of them did. But we made it very clear, our relationship from the very beginning.

Q. What was that relationship at the beginning [813] that you told these people about? A. That we would have the support and guidance of the Citizens & Southern National Bank. We said we are a small bank, but we have every service that the big bank has, and we can give it to you here.

Q. Did you tell these local people in Chamblee that C&S National would be running your bank? A. I told them they would be behind us.

Mr. Kinkaid: Excuse me, Your Honor.

No further questions, Your Honor.

The Court: All right. You may step down.

Mr. Hodgson: Judge, in view of the fact that we had planned to have approximately twelve witnesses on and did not know—

did not predict this course of trial, we do not have any witnesses currently on call and present in the courtroom. As a consequence, I would say we are ahead of schedule, you might say.

The Court: All right. How soon can you have a witness in the courtroom?

Mr. Hodgson: After lunch. Is that satisfactory with Your Honor?

The Court: Yes, sir.

[814] Mr Hodgson: Some of them—we are through, for the most part, with our own people, you see.

The Court: You can have them about 1:30?

Mr. Hodgson: Yes, sir.

The Court All right. We will be in recess until 1:30.

(Whereupon a recess was had from 11:00 o'clock, a.m. until 1:30 o'clock, p.m.)

[815] Afternoon Session
 1:30 P. M.

Mr. Hodgson: Mr. Beasley.

Whereupon,

LEWIS C. BEASLEY

was called as a witness by and on behalf of the defendants, after having first been duly sworn, testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your name for the reporter, please, sir. A. Lewis C. Beasley.

Q. What is your job, Mr. Beasley? A. I'm regional director of Federal Deposit Insurance Corporation.

Q. Here in Atlanta? A. Yes.

Q. What area does that cover? A. Georgia, Alabama and Florida.

Q. How long have you been in that position? A. Since April, 1967.

Q. Where were you before then? A. St. Louis, Missouri.

Q. With the Federal Deposit Insurance Corporation? A. Yes.

[816] Q. What is the function of your office? A. Under the guidance of the director of the preparation division of bank supervision, I administer the bank supervisory functions of the corporation in the Atlanta region. This involves guidance of the examination program for state non-member insured banks, the administration of statutory investigation work that would cover merger applications, applications for deposit insurance information, uninsured banks or for proposed banks that are to be members of the Federal Reserve System, branch applications, any other statutory type of applications, before the FDIC for decision.

Q. Broadly, would you describe to the Court what you do with respect to examination of banks within your supervision?

[817] A. Well, I have a staff; they examine the banks for safety and soundness, conformity to law, adequate capital management. They provide reports which flow through my office, which I review or have reviewed. I then see them before I forward them to Washington, with a recommendation for any action I think the corporation should take.

Q. Do these systematic contacts through examinations and treatment of application of various sorts lead you then into direct contact with officials of banks in your region? A. Yes.

Q. What sorts of contacts do you have with those individ-

uals? A. My contacts would come largely when we have problems with banks, either through correspondence or conferences in dealing with applications, when we, either through correspondence or through direct discussion, deal with the subject matter of the application.

Q. Do bankers or not frequently consult you with respect to actions they propose taking before they make final applications? A. Yes.

Q. Have you been in such contact with officers or officials of the Citizens & Southern National Bank [818] and Holding Company from time to time in this regard? A. Yes.

Q. Mr. Hall, the president of the Citizens & Southern Holding Company has testified that he has kept in close touch with the various regulatory agencies concerning the activities of that holding company from time to time. Would you consider yourself included in that group? A. Yes.

Q. What sorts of contacts does Mr. Hall and his people—do Mr. Hall and his people have with you from time to time? What form do these contacts take? A. Well, either by telephone call or a visit, they discuss applications they contemplate filing, have filed, practices or policies of the banks under their guidance.

Q. In your capacity as regional director for the Atlanta region of Federal Deposit Insurance Corporation, did you consider the application for Federal Deposit Insurance of the Citizens & Southern Bank of South DeKalb at the time it was in organization? A. Yes.

Q. Did you understand that Mr. Warren Berry was proposed to be the president of that bank once it was organized, that he had been an officer and employee of [819] the Citizens & Southern National Bank, and at the time the application was being considered by your office, he was a manager of a branch of the Citizens & Southern National Bank? A. Yes.

Q. Did you consider the application for that charter as being one sponsored by the Citizens & Southern National Bank? A. Yes.

Q. Did you expect that the Citizens & Southern South DeKalb Bank, if the charter were organized, would have the general policies of the C&S, its standards, the support of its normal audit procedures, and that the Citizens & Southern National Bank and Holding Company were behind the proposed bank and would supervise it?

Mr. Kinkaid: Excuse me. Your Honor, I would much prefer to hear this testimony in Mr. Beasley's own words. It seems to me like an awfully leading question on a very important point.

The Court: Would you break it down, please, sir.

Mr. Hodgson: All right, sir; yes, sir. [820] With respect to this application and your expectations concerning support of the Citizens and Southern National Bank Holding Company, what did you expect that this sponsorship and support would consist of? A. I expected particularly that audit procedures and general policy guidelines would be furnished by Citizens and Southern.

Q. What about with respect to management and management continuity? A. Yes, I think that generally management had come, it did in the Citizens and Southern South DeKalb case, from the Citizens and Southern National staff.

Q. Considering applications which were in fact made for branches submitted by non-C&S Banks in DeKalb-Fulton areas and market areas where C&S five percent banks were also in existence, did you consider the support that the Citizens and Southern Banks received from C&S as making them better able to receive competition than if they were independent unit banks? A. Yes.

Q. Did you pass on the application in any degree of Citizens and Southern of East Point to establish a North Springs branch

at Roswell and Dalrymple Road? A. My office was required to make a recommendation.

Q. In passing on that and making your [821] recommendation, did you consider that this branch application was a part of an overall plan which also included the application contemporaneously submitted by East Point to merge with C&S Sandy Springs and C&S North Fulton? A. Yes, sir.

Mr. Hodgson: He is your witness, Mr. Kinkaid.

Cross-Examination

By Mr. Kinkaid

Q. Mr. Beasley, I wanted to get a couple of things straight, really, about what we might call a chain of command between your office and the FDIC office in Washington. If I understood your direct testimony correctly, when you entered into the organization of the South DeKalb or even the branch for East Point in North Springs, am I correct in understanding that your office was simply conducting an investigation and making a recommendation to the folks at Washington? A. Yes. I have a field examiner conduct a field investigation then I have to make a recommendation to the Washington office.

Q. In other words, you yourself do not exercise the final approval or authority for the FDIC? A. That's correct.

Q. I think you also, in generally describing the [822] functions of your office, noted that basically it shall function to see to it that various banking activities, particularly those of non-member banks are handled in conformity with the law; am I correct in recollecting your testimony in that regard? A. Yes.

Q. Now, the laws you were referring to were various banking statutes; am I right? A. Basically Federal banking statutes.

Q. Right. Do the laws—does this question of conformity to the law, do you have anything at all to do with determining

whether the actions of the bank under your jurisdiction conform with the anti-trust laws in any way? A. Well, I'm not an attorney so I would not render opinions as such.

Q. No, what I was getting at, of course, you are head of the local FDIC office and you were describing the functions that you perform, and you did say that one of the functions that you perform was determining whether various banking activities were conducted in conformity with the laws. I would think it would come within your own knowledge as to what laws you have in mind. A. I have generally banking laws in mind.

Q. Do you have the anti-trust laws in mind? [823] A. I did not have anti-trust laws in mind.

Q. As a matter of fact, were any of the matters that Mr. Hodgson asked you about, were the anti-trust laws considered in any respect within your own investigation or recommendation? A. On the recommendations on mergers, the effect of the transaction on competition?

Q. Right. A. It's considered.

Q. Yes, of course, I was thinking more in terms of the application for the new bank at South DeKalb. A. No.

Mr. Kinkaid: We have no further questions.

The Court: You may step down.

Mr. Hodgson: Thank you, Mr. Beasley. You may be excused.

You have no reason for us to hold this witness, have you?

Mr. Kinkaid: No.

[824] Mr. Hodgson: Mr. Ream.

JOSEPH M. REAM,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your full name for the reporter, please, sir. A. Joseph M. Ream.

Q. What is your position, Mr. Ream? A. Regional administrator of national banks, Sixth National Bank Region, Atlanta.

Q. Under what national organization do you function? A. Controller of the Currency.

Q. How long have you had this position? A. September 1st, 1966.

Q. Would you describe to the Court the function of the office of regional administrator? A. It is the primary field supervision of national banks within the region, which includes investigation of branches, charters, mergers, trust powers and other banking functions. This also includes the field staff of examination of the bank itself, the preparation of the reports, initial supervision of the [825] banks and forwarding the reports to Washington.

Q. Does this or not place you into systematic and regular contacts with officials of banks within your region? A. It does.

Q. What is the scope of your region, Mr. Ream? A. South Carolina, Georgia and Florida.

Q. As a result of these contacts, do you have other contacts with officers of national banks in your region? A. I do.

Q. What form do they take? A. In the event of severe problems in a national bank, I normally meet with the board of directors and the officers of the bank. Many times we will

have public hearings on charters and branches. I also meet with them informally, at gatherings, such as the BGA, FBA, South Carolina Bankers, and normal supervisor-supervisory relationship.

Q. Is your office consulted from time to time by officials of national banks in your region as to actions they propose taking? A. Normally.

Q. This normally happens? A. Normally, yes. Especially on charters, branches, [826] building programs, capital programs, this sort of thing.

Q. Was the Citizens & Southern National Bank and Holding Company an exception to this, or did they consult you regularly in that regard? A. They consulted me.

Q. They did? A. They do.

Q. Which officers do? A. Many times, Joe Hall, Gordon Trulock, Howard Starks, Bill Green, many of the officers of C&S.

Q. In the scope of this, did the fact that these five-percent relationships, which I will describe as relationships between the National Bank and Holding Company on the one hand, and state banking companies in which it held—they held a five-percent interest on the other, and with which they had various management relationships, were those discussions with you and did they come to your attention? A. Yes.

Q. In what form? A. Well, the Holding Company is a subsidiary of the National Bank, and we have the right of examination of all subsidiaries. And these five-percent holdings would appear as assets in the Holding Company's books, [827] so that they are available to us as we check the Holding Company's books.

Q. With regard to the application for charter of the Citizens & Southern Park National Bank, a national association, did

you have any expectations as to the extent of the C&S relationship that would exist if the charter were granted? A. I knew that C&S would provide management policy, audits, legal service, and various other factors as though it were an important part of their own organization, yes.

Q. Did you consider this, the furnishing of these services and the giving of this relationship, as a favorable factor in considering the charter application? A. I did not consider the charter application.

Q. Did you make any sort of recommendation with respect to it? A. This, I believe was done before I arrived in Atlanta. I think that was done in the spring of '66 or fall of '65. I did not arrive until September.

Q. So far as you know of that relationship, would you have considered it a favorable aspect or an unfavorable one?

Mr. Kinkaid: Your Honor, that is [828] pretty speculative, and the man was not here, as he has plainly stated and has nothing to do with it.

Mr. Hodgson: I think he is speaking as an expert, Your Honor, as to whether he would or not.

The Court: Go ahead, you may answer.

A. Repeat the question, please.

Q. Would you have considered those relationships as being a favorable factor or an unfavorable factor, yourself, standing alone? A. The fact that there is continuity of management, which is a problem in many banking institutions, yes, that would be a favorable factor. The feature of participation of loans to get the bank onto an immediate profitability basis, as we have in Florida with our holding companies there, yes, there is a definite advantage to affiliation or an affiliation.

Q. In considering an application by a non-C&S bank in Atlanta and Fulton County after countywide branch banking

became possible, such as by the National Bank of Georgia or First National Bank, to establish a branch in that market area, in the market area of a C&S five percenter, would you consider that the five percenter was more able to withstand competition [829] of those new branches than if it had been an independent unit bank? A. Yes, I do.

Q. Why? A. Because the C&S Bank actively competes with these organizations, and I feel that with their association with the five percenters, they are going to use the same competitive aspects as they would in the city, if it were a branch.

Q. Except for the legal, separate structure of the banks, do you consider these five percenters to be C&S Banks? A. No.

Q. Except for the legal structure. A. Well, except for the legal structure, they are associated, affiliated, but they do have separate boards of directors and are supervised independently of any parent organization while they are under the aegis of the C&S National; yes, I must say that they are independent organizations.

Mr. Hodgson: All right, sir.

Mr. Kinkaid: Your Honor, we have no questions.

The Court: You may step down.

Mr. Hodgson: Thank you, Mr. Ream.

[830] Mr. Doyle: I call Mr. Henry Collinsworth.

Whereupon,

HENRY T. COLLINSWORTH, JR.

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. State your name for the record. A. Henry T. Collinsworth, Jr.

Q. Where are you employed? A. C&S Bank.

Q. In what capacity? A. Executive vice president, corporate banking.

Q. How long have you been with C&S? A. Twenty years.

Q. Could you outline generally the areas of banking which you have been employed in? A. Operations a brief period of time, approximately ten years in consumer lending and consumer banking. For the past ten years, in corporate banking.

Q. Could you outline briefly what the business of the corporate banking area is? A. It's our business to handle the corporate customers of the bank, those business customers as opposed to individual customers of the bank including both [831] national companies, who are doing business with us, those local companies who do business at our main office or downtown office as opposed to our branches and small businesses, in your small business lending area.

Q. Mr. Collinsworth, you have before you a copy of Defendants' Exhibit 84-85; do you not? A. Yes, sir.

Q. Mr. Collinsworth, have you had occasion in connection with your testimony here today to analyze your corporate business coming under your department? A. Yes, sir.

Q. Have you attempted to determine the dollar value of demand deposits of Citizens and Southern National Bank and its

affiliates which are in excess of \$100,000 which originates from companies headquartered outside of the State of Georgia? A. Yes, I have.

Q. That is that first figure on this Exhibit 84-85; correct? A. Yes, sir, \$138,962,000.

Q. The second figure there, State of Georgia, is the same thing except that it's outside of the Atlanta area? A. That's correct; it's \$23,524,000.

Q. And by Atlanta area, we are talking mostly [832] about metropolitan? A. Metropolitan Atlanta area.

Q. Then, that third figure? A. Is the out-of-state accounts from ten to a hundred thousand dollars, that is those accounts head-quartered outside the State of Georgia which is \$19,740,000.

Q. All right. The correspondent bank accounts that are reported there, those are as they are characterized? A. They are correspondent bank accounts from banks in Georgia, Alabama, Florida, and other parts of the southeast.

Q. Okay. A. Which total \$54,749,000.

Q. In that Division 1, Georgia? A. Yes.

Q. Is that within or without Atlanta metropolitan area? A. It's out from the Atlanta metropolitan area.

Q. Okay. Now, with affiliates you did essentially the same thing? A. Yes, sir, we took those accounts from Georgia headquartered companies, those companies headquartered outside of the Atlanta area, yet bank at Emory, East Point and DeKalb amount to \$8,403,600.

[833] Q. And then with regards to correspondent associate banks, you had occasion to run that analysis as reported there? A. That's right. Those totalled, in the case of Georgia headquartered companies, \$6,685,400.

Q. The correspondent associate banks there, are those the ones who are defendants in this action? A. Yes, sir.

Q. Now, you talk about an out-of-state company, what is included within that? A. These are companies whose corporate headquarters are located outside the State limits of Georgia, basically those companies where the financial decisions are made at corporate headquarters.

Q. And by financial decisions, what do you include within that so far as this is concerned? A. Placement of these bank accounts, judgment as to which banks will receive these accounts.

Q. Are there included, say, in that first figure, \$138,000,000 figure, are there included in there any accounts of companies which have no brick or mortar physically located in Atlanta? A. Yes, there are.

Q. Give us some examples of what and why, how that comes to be. [834] A. For instance, there is an account of Warner Lambert Pharmaceuticals, a New Jersey company, a lock box at our Atlanta office, Atlanta main office, C&S National Bank for collection of its accounts receivables. These accounts originate throughout the southeast. The account is billed by Warner Lambert. The check comes from the lock box or post office box under our control and is deposited in the account at C&S National Bank. The company gains the benefit of faster collection time on these items through our check collection procedures. Again, faster mail time into Atlanta as opposed to New Jersey.

Q. What are the effects with regards to a company getting its money? A. A company gets its money faster, gets expendible funds faster.

Q. Can you give us another example where a company has no brick or mortar in Atlanta, you know, physical location? A. Yes, we have an account which has just come on from the International Telephone & Telegraph Company, Continental

Baking Division, where bakeries throughout the southeast send deposits into concentration accounts in our bank. These are internal funds from these bakeries. They are collected in our bank here and transmitted onto the company's headquarters in New York. The company again [835] gains collection of funds. In addition, it has control of funds from the time collected into the banks in the areas throughout the south.

Q. All right. Now give us the range of banks that you compete against for this kind of business. A. Well, the larger the dollar deposit, the more the competition from outside our area. These competitors in New York, money centers, such as Chicago, Los Angeles, they are in North Carolina, they are in other parts of the southeast.

Q. All right, sir. Now, all of the figures that are reported in out-of-state, State of Georgia, \$100,000 and more, all of them are not related to companies that have no physical location? A. No, sir, they are not.

Q. And now, do out-of-state banks compete for the same national accounts sort of business of Atlanta-based businesses? A. Yes, they do. We have a number of accounts here in our bank in Atlanta which do business with banks around the country.

Q. Are you aware of the extent of that? A. Yes. For instance, I'm aware of certain instances, for instance, New York's banks, I believe nine in number, tell us they have \$45,000,000 on deposit in [836] Atlanta-based companies. Chicago banks tell us they have approximately \$9,000,000 on deposit from Atlanta-based companies.

Q. Now, you have reported here and on this exhibit deposits at correspondent associates from the companies categorized. Who solicited that business? A. In some measure, the Citizens and Southern National Bank solicited the business or assisted in its solicitation through account offices in corporate banking areas.

Q. Other instances? A. The business was solicited in some cases by those banks themselves, but the principal assistance in putting together the relationship, I would say, came in joint efforts between those banks and our corporate banking offices.

Q. Can you give us any example of how this would come to be with regard to the specifics? A. Yes, I can give you one particular account, Marathon Oil Company which has an account at the C&S National Bank, main office, in addition has \$3 million, or we, C&S National Bank, has a \$3 million dollar participation in revolving credits of this company, in that company's total credit. That company, in addition, has a lock box relationship with us and deposit relationship at [837] the Citizens and Southern Park National Bank. In this particular case, the company's principal balances are at Citizens and Southern Park National Bank, amounted to some \$500,000.

Q. Does the handling of this lock box business of Marathon Oil, for instance, relate at all to Citizens and Southern's system? A. The handling of the lock box done at the main office in Atlanta, that is the negotiations for a lock box, the call on the company related to it was done by the Citizens and Southern National Bank.

Mr. Doyle: That's all.

Mr. Sims: If we could have just a minute, Your Honor.

Cross-examination

By Mr. Sims

Q. Mr. Collinsworth, looking at this chart, Exhibit 84-85, the first number on there is out-of-state accounts, \$100,000, and over a total of \$138 million. Do you know how many accounts that represents? [838] A. No, sir, I don't. We have back-up information; I don't have it with me. It would be in excess of a hundred; I don't know.

Q. Would it be in excess of two hundred? A. I just couldn't answer that. It would be an approximation, and I just don't have any——

Q. Would it be less than a thousand? A. Yes, sir, I would think it might be.

Q. Do you happen to know how many accounts are represented by any of these other numbers on this chart? A. Yes, sir. Again, these are approximations. I don't have exact figures.

Q. Approximations are fine. A. But I don't—in the case of the next two items, in the case of the correspondent banks, we have some 700 correspondent bank accounts in total. Those represented in the first three, I would say, would—first three categories would represent the largest majority of those. I don't have the specific number.

Q. How about the figures for the affiliates? Do you have any idea of how many accounts those involve? A. No, sir, I don't in the case, no, sir, I just don't. I don't have the specific numbers.

Q. And for the correspondent associates? [839] A. No, sir.

Q. Do you know how many total accounts Citizens & Southern National Bank has? A. How many total bank accounts that Citizens & Southern National Bank has?

Q. Total bank accounts. A. Well, no, sir. I would guess the figure is in excess of 100,000, but it is a guess. You are talking about total bank accounts?

Q. Total bank accounts.

You mentioned that some of these out-of-state accounts were, I think you used Warner Lambert as an example? A. Yes, sir.

Q. People who don't have any brick and mortar in the state of Georgia? A. Right.

Q. How many others are there like Warner Lambert in that?
A. There are a number. Again, I don't have a specific number, but there are——

Q. As a percentage of the total number, what would you estimate? A. The percentage of the total number is relatively small.

[840] Q. All right. Mr. Collinsworth, how long have you been with C&S National Bank? A. Twenty years.

Q. Have you always been in the corporate accounts department? A. No, sir. As I said, I was in consumer lending and consumer banking for about ten years.

Q. What determines the bank's lending ability? A. What determines a bank's lending ability? I think that bank's size; I think its capability of its lending officers; I think the market in which it operates.

Q. When you say size, do you mean the amount of deposits that it has on hand? A. No, sir, I mean the lending capacity of that bank.

Q. Would you distinguish those two things, the amount of deposits versus the lending capacity? A. Well, there are legal limits applied to banks related to capital and surplus. There are. I think deposits relates somewhat to capacity, in that they have funds which they can lend or over which they cannot,

Q. Let's try to—let me try to get a little clearer on this last point. The bank has a legal lending limit? A. Yes, sir.

[841] Q. Which is determined by what? A. Its capital surplus and undivided profit.

Q. What relation does the total deposits of a bank have with those figures? A. Well, obviously, the bank's ability to gather deposits to the extent that capital and surplus relate to those deposits. A bank is required to maintain certain capital requirements in relation to its deposit size. Obviously, the larger

the deposit, the larger the capital growth of the bank, the more money it can lend.

Q. So, therefore, the larger the deposits, indirectly at least, the larger the lending ability? A. The larger the lending capability, to the point that it reaches a legal capacity.

Q. Right. When your bank is faced with loan demands in a particular area, let's use DeKalb County as an example, is its ability to meet those demands limited by the amount of deposits that it draws from DeKalb County residents? A. Let me give you this example. I think, and, again taking the case of Marathon Oil, Marathon Oil's request for credit at a time when money was awfully tight, the capacity of the C&S National Bank enabled us to meet that need, even though the main deposit of that company was at the C&S Park National Bank, [842] simply because we look on these banks as one and the same.

Q. Okay. Well, let me rephrase the question, then, because I don't think we are on the same point.

To the extent that you have loan demand in DeKalb County, as an example—— A. Yes.

Q. ——is your ability to meet that loan demand determined solely by the amount of deposits which you receive from DeKalb County? A. No, sir, it is related to the amount of deposits that are in the bank as a whole.

Mr. Sims: I have no further questions.

Mr. Doyle: Call Mr. Gordon Trulock.

The Court: Step down. Thank you.

GORDON B. TRULOCK, JR.,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Doyle

Q. State your name for the record, please, sir. A. Gordon B. Trulock, Jr.

Q. By whom are you employed, Mr. Trulock? A. The Citizens & Southern National Bank.

Q. In what capacity? [843] A. I am now assistant to the president.

Q. How long have you been with the bank? A. Twenty-five years.

Q. In broad brush, would you outline your career with the bank? A. Basically, I have been in the credit and credit-related areas for the entire twenty-five years. Just prior to my becoming assistant to the president in May of this year, I had been senior vice-president for credit for the C&S system. I had been in that capacity for approximately four to five years.

Q. What part of banking is credit? A. Well, credit, basically, is the lending of money, the making of loans. In my case, primarily commercial loans to businesses or time loans to individuals, and I say commercial and time loans to distinguish from the consumer loan area, with which I haven't had much involvement.

Q. Can you tell us what ingredients you consider, a banker considers, in making a loan or handling a loan application? A. What ingredients?

Q. Uh-huh, what goes into it? A. Well, basically, there are five ingredients that any lender of money might consider in extending [844] credit. I think, first, would be the cost of money. I think second would be the cost of servicing. Third

might be the risk factor that is involved in lending money. Four might be the profit factor that we would expect off of a typical loan transaction. And, finally, we have to consider the competitive environment in which we operate.

Q. All right, sir. Let's go back and treat each of those briefly. A. Yes, sir.

Q. With regard to the cost of money. A. Yes, sir.

~~Q. What do you consider—how does that get determined?~~

A. Well, as I look at it, a bank, such as the C&S, makes many different types of loans, but, basically, we are lending from a central pool of money that arises from demand deposits, time deposits of various kinds, as well as the short-term money market instruments. For example, federal funds. It is difficult, I think, or well-nigh impossible to say that a given loan is funded entirely by either time or demand deposits, although I think to a certain extent we do consider this.

Q. What factors affect the cost of money? [845] A. Pardon?

Q. What factors go into the cost of money that you have to pay? A. Well, in the case of time deposits, the rate that is paid; also, I think to be included is the cost of servicing, and, that is, the cost of accumulating, of soliciting of loans; the inherent cost of maintaining the records or filing the necessary reports that are attendant with various types of deposit transactions.

Q. Would you take for me a couple of examples of loans where the cost of servicing would vary, let's say, one at one end and one at the other. A. Yes. As a for example, and illustrating a situation where the cost of loan servicing might be minimal would be perhaps the lending of money to a national account, such as Mr. Collinsworth described. For example, if General Motors were to send a note into the C&S Bank, I would say that the cost of servicing that particular type—that particular loan would be relatively small. On the other hand, if a local company, because of its financial strength, et cetera,

is borrowing against accounts receivable, we might consider that this is the type of loan where the proper control and dominion, supervision, if you will, of the collateral requires a great deal more time and expense [846] on our part. And, in a case like that, we would say that the cost of servicing is fairly significant.

Q. You mention inherent risk factor. I suppose that is obvious, but would you show us by brief examples the way those might differ? A. Well, here again, we get into a broad range of topics. But, specifically, I look at risk as that probability of the bank being repaid its principal plus interest that is involved in any loan.

[847] Q. What would you consider a very low risk kind of loan as an example? A. Well, the low risk type loan might again be a loan to a large national company of impeccable credit standing and strength for the size of the loan as related to the company's total assets, where the purpose of the loan is relatively short term in nature and we can foresee or anticipate a fairly rapid pay-back. We might say that the risk is minimal. On the other hand, where we are lending to a small business, for example, that is just getting underway where the financial strength is perhaps marginal, and perhaps the future of the business really depends in part on their earning a profit fairly soon after they open the doors, you would say that the risk is significant.

Q. All right, sir. You mentioned the profit factor and competitive factor. A. Yes.

Q. Tell me how you go about putting those into a mix. A. Well, obviously, we like to think that the dollars we lend, the purpose of our lending activity is such that a typical borrower, customer can use the dollars we lend at a profit to himself, and the customer having then earned a profit, we think that we are entitled to be [848] compensated for our time and effort, and so we typically attempt to plug in a profit factor.

Q. And the competitive effect? A. Well, we don't lend money in a vacuum. By that, I mean that to say, the customer has other choices in terms of lending institutions who are willing to make credit available to him. And while we might feel that a credit based on the standard that we use should carry a rate of interest of, we'll say, eight percent, we have to carefully review our transmittal process or calculations to make sure that this is right because we know that if we are wrong, and that we quote this customer a rate that is not in keeping with the type of transaction, that he can very likely go across the street and borrow the money at a cheaper rate.

Q. Well, in a given situation, with a given customer, Mr. Trulock, how do you put all these factors together? A. Well, I like to think, in fact, I know that, Mr. Doyle, having been involved in this for a number of years, that the lending of money is an art and not a science. By that, I mean, simply this, that we know that the ingredients that go into the making up of the credit decision for any given credit place different emphasis on different ingredients. And it finally gets down to the ability of [849] the lending officers to evaluate these, to determine the validity of the loan request in terms of its value to the customer and to the community, to this about all of these factors, that these five factors, at least, that I have outlined, and to arrive at a decision as to a rate that is proper. And I'm sure, because I have seen it happen, that you can take the very small loan requests, you can ask five lending officers in the Citizens and Southern Bank to evaluate it, and to list the strong points in the credit and to list the weak points in the credit, and finally come up with a rate of interest. I dare say out of those five people you would have at least four, maybe five different conclusions. Could have, you may not have.

Q. Now, your office and you have, on occasion sent out various kinds of general quoted rates? A. Yes, sir.

Q. Can you tell me how those fit into this picture that you

are telling us about? A. Basically, and I assume you're referring to rate charts——

Q. Yes, sir, that sort of thing. A. Well, we attempt to do this primarily as a service to the lending offices to the various areas of the banks knowing full well that there is nothing in the way of an ethical secret about this, that they could obtain [850] the same information about this if they had the time and inclination to do it, and really, it's in the final analyses, Mr. Doyle, a composite of our reaction to the national money market to supply and demand for money, if you will, to our evaluation of the propriety of the bank making a specific type of loan under existing economic conditions.

Q. You say that if they had an inclination to get it, where could they go get it? A. Well, it's not a question of really where they would go get it. It's a question of really trying to digest the voluminous information that is available. For example, the Federal Reserve Bank publishes economic information that most businessmen have available. The great majority of businesses belong to various trade associations, which, as a service to their members, publish economic trends or information that is available across the board.

By the same token, the Atlanta press frequently comments on changes in rates, the fact that the Federal Reserve Board perhaps has changed to some degree its posture and is either making money more readily available or conversely, is attempting to restrict the money supply.

Q. In Citizens and Southern Bank, who makes the decision as to whether or not to commit to make a loan? A. The lending officer.

[851] Q. Does he have to go to a committee to get approval? A. Typically speaking, in the Citizens and Southern Bank the lending officer has the authority and he will usually make the loan decision and so tell the customer. Now, we do review the loans after the fact. There may be some instances when because of the

nature and the structure of a credit that a lending officer might come and consult with myself or with some other officer in the bank, attempting to get our ideas as to how a loan should be structured. And if he asks for it, we attempt to give it. At the same time, it's his decision. He has to assume the final responsibility for having made the loan. If the loan goes bad and is charged off, I can assure you it's his bad loan and not mine. And on that basis, we emphasize we are glad to give you all the assistance that you want and need, but as a lending officer of this bank, you are expected to assume that final responsibility of saying yes or no.

Q. Now, you mentioned after the fact credit review. You have heard earlier testimony about the credit review meetings, credit committees? A. Yes, sir.

Q. You heard the question, I think, that was put to Mr. Handley, as to whether or not credit review has a [852] stabilizing effect on loan rates. Tell us about credit review, what it does. A. Well, first of all, I don't think that it has a stabilizing effect on loan rates for the simple reason that review is primarily after the fact. It comes after the loan has been committed, after the customer has been told, "Yes, we will make the loan." After the rate has been quoted.

Q. Now, what is the purpose—what do you do there? A. Well, the primary purpose of credit review, one is to maintain some feel of the continuing quality and liquidity, if you please, of the loan portfolio.

It is used to a very large degree as a training tool to assist in the development of younger lending officers. In other words, this is a forum whereby we can make use of a living example, if you will, we can discuss a particular credit as it relates to C&S policy and philosophy.

Q. Now, would you liken it to the case method of instruction? A. Indeed I would.

Mr. Doyle: He is with you.

Mr. Stern: May we have a moment, Your Honor?

The Court: Yes.

[853]

Cross-Examination

By Mr. Stern

Q. Just a couple of questions. You stated, if I recall your testimony right, that several people at C&S National, about five people, you said, would get together to decide what to charge under certain circumstances for a loan? A. No, sir, I don't believe I said that, Mr. Stern. If I did, I didn't mean it in that context.

Q. You said they would have different ideas, different people would have? A. I said if you presented the same situation to a group of five people in the bank, you might come up with as many as four or five different reactions and different ideas as to the proper rate that the loan might carry.

Q. Isn't it possible that somebody might, outside the bank might also have a different view? A. That's right.

Mr. Stern: Okay. Thank you.

The Court: You may step down.

Mr. Doyle: No further questions. I call Mr. Ben Cook.

[854] Whereupon,

BEN C. COOK

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Mr. Cook, state your name for the record, please, sir.
A. Ben C. Cook.

Q. Where are you employed? A. Presently employed by Citizens and Southern Bank of Cobb County.

Q. In what capacity? A. Banking officer, manager of Marietta Square office.

Q. Could you outline for us your former history? A. I came with the bank in 1955 and worked in various areas.

Q. Which bank? A. Citizens and Southern National Bank. I worked in various areas, primarily clerical positions until 1959, while I attended school at night. I took a leave of absence from the C&S Bank to go to the Navy. I came back in 1963. I worked in the credit department, analyzing credit, credit files for approximately one year and then [855] since that time I have worked in the various branches throughout the C&S system.

Q. All right, sir. What branches did you work in? A. I went to the Northwest office in 1964. I went to the Fulton Industrial office, C&S Bank, 1966. Then, I went to C&S Belvedere Bank in March of '68, and in November of 1971, I went to the Citizens and Southern Bank of Cobb County.

Q. November of '71 you went to Cobb County? A. That's right.

Q. From 1968 to 1971, you were at Belvedere? A. That's right.

Q. During that period of time, the Citizens and Southern Bank of DeKalb was merged within the C&S Bank of Belvedere? A. C&S DeKalb Bank.

Q. And you were at Belvedere during that time? A. Yes.

Q. I wonder if you would tell us what difference it made as a result of that bank being merged into a branch.

Mr. Lehman: I object to the relevancy, materiality of Mr. Doyle's question. We are not dealing with a bank at hand in the case today, the defendant's banks. This merger occurred

over three [856] years ago. Apparently it has, is channeled toward the Section 7 portion and I do not see the relevancy nor the materiality as to the relationships involved before the Court as to the defendant banks, nor as to the mergers before the Court.

The Court: Overruled. You may answer.

The Witness: C&S Belvedere Bank was a unit bank. That was the only banking location of that particular bank. As such, we carried on the entire operations of the bank there. I was a cashier of the bank. As such, I was in charge of the operations department, that is the fulltime bookkeeping department. I also served in a lending function, retail lending and commercial lending. I would imagine I would have spent at that time approximately forty to forty-five percent of my time in the operations function, that is attending to the management of the operations area.

After the merger, the operations department was no longer my responsibility and all of my time was, at that time, devoted to, waiting on customers, soliciting new business, and so on and so forth.

By Mr. Doyle

Q. What sort of effect did this merger have on [857] the ability of that bank and banking office to serve its customers?

A. I think it improved it considerably from a couple of standpoints. One, it enabled those of us who were on the line in that location to devote more of our time to what we think of as front-line banking operations, that is soliciting business, opening accounts, making loans. There are some efficiencies to be gained perhaps, in combined operations, operation departments.

There was an increase in our legal limit because of combining the resources of the C&S DeKalb Bank and C&S Belvedere. There was an increase in lending limit resources which we could rely on to wait on larger corporations.

The size of C&S Belvedere Bank prior to that, we did have several corporate customers who we were banking. It was necessary to participate out a portion of their loans because of our resources. Because of our resources we were unable to handle the entire transactions. While we can make larger credits available to customers in this manner, it requires the steady approval of the credit by the participating bank also. It is a bit more time consuming, a little less flexible.

[858] Q. All right, sir. And how about with regard to deposits? Was there any difference, for any of your customers in that connection? A. The only change in the deposits would be that we had an additional location at that point that they could deposit their funds and receive same-day credit. At that particular time, we were accepting deposits for other C&S banks, other C&S locations. However, those deposits were necessarily forwarded to the bank of account. Prior to that time, for example, if one of my customers at C&S Belvedere had made their deposit at the Avondale location, it would have been necessary for Avondale to have forwarded it to me, resulting in a minimum of a one-day delay in their receiving credit.

At that time, of course, if they made their deposit or any transaction that they conducted at the Avondale location, they could receive same-day credit.

Q. The significance of the same-day credit, is that important to a relatively small number of your overall customers? A. I think it is quite important to the customers because of a convenience factor. And, historically, a lot of our customers get paid and make their deposits and write out all their checks the same day. So it is [859] most important that we give them credit for the funds immediately. And, of course, it just afforded them an additional location on which they could receive same-day credit.

Q. Did your customers know the difference before and after? A. Not really. They came into the office there, and I was

still there; Susie or those girls, all the faces were the same; there was really no difference so far as the public banking function was concerned. There was no difference evident to the customer at all.

Cross-Examination

By Mr. Lehman

Q. Now, Mr. Cook, you mentioned that through the merger the banks were better able to serve the customers in your opinion; is that correct? A. Yes, sir.

Q. What new services did the merger bring that weren't provided to your customers before the merger? A. Not a new service per se, just an increase in legal limits and an additional location with which they could conduct their business.

Q. As to the increase in legal limits, in other words, that meant that you didn't need to engage in loan participations as much as you had before? [860] A. Well, as Mr. Collinsworth indicated before, we do have limits, and our legal limit that we could lend to one particular customer at that time, of course, was increased by the portion that the capital and surplus of the two combined banks were.

Q. And as to this merger, adding an additional servicing area to your customers, additional bank, branch or whatever, how many of these customers that would be serviced in this additional area would normally engage in a loan the size that would require or would have required a loan participation with C&S National? A. I don't recall. There were several. I had several loans participated out to various branches at the time. I don't recall the exact number.

Q. Would it have been a large amount, do you recall, or a relatively small amount? A. Well, of course, everything is relative. I suppose probably in—by your terms, it might have been relatively small. I don't recall how many there were. As I recall, there were seven or eight corporate customers whose

needs that we actually could not serve without the participation function. But, I don't recall the exact number; I am sorry.

Q. Do you believe that a large bank, such as C&S is better able to serve the customer than, say, [861] a smaller bank? A. There is no question about it, particularly in an area with an expanding economy we are in here.

Q. This would be to the average customer, what you would consider to be your average customer? A. Well, who is the average customer? We all benefit from the economy as a whole. I don't really know how to answer the question, to be honest with you. We are located in an area of expanding economy; I don't suppose I am qualified to answer this question. We are in an expanding economy, and unless industry is able to keep up with the needs of the public, the public is going to suffer in the long run; in the end it all comes down to the consumer.

Q. Would you consider industry your average customer then? A. What do you mean by average? Dollar volume, number of accounts or what?

Q. Let's say number of accounts. A. No, not in number of accounts, no, sir.

Mr. Lehman: We have no questions.

The Court: All right, you may step down.

Mr. Doyle: One moment, if Your Honor please.

[862] The Court: Oh, excuse me.

Mr. Doyle: No further questions.

The Court: Thank you.

Mr. Doyle: Call Merrill Autry, Jr.

MERRILL AUTRY, JR.,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Doyle

Q. State your name, please. A. Merrill Autry, Jr.

Q. Where are you employed, Mr. Autry? A. I am employed with the Citizens & Southern Emory Bank.

Q. How long have you been employed there? A. Since July of 1969.

Q. What capacity are you employed in? A. President.

Q. What is C&S Emory Bank? A. It is a—except for qualifying shares of the directors, a wholly-owned subsidiary of the Citizens & Southern Holding Company. It has four offices.

Q. All right. Before you went to C&S Emory, outline for us your employment history, please, sir. A. I have been with the bank twenty-one years. [863] I grew up, basically, in installment lending and term lending, spent five years in a Chicago service office. I returned, headed up corporate accounts, then moved to head up the correspondent banking department of the C&S National Bank, and then went to C&S Emory.

Q. Can you tell us, outline for us, the history of the growth of C&S Emory Bank? A. Emory started at the so-called Emory Village, right down by Emory gate, Emory University gate, in 1951. The bank remained there until 1956 or '57. It applied for and received permission to move to 1237 Clairmont Road, which was about a mile east of the Emory campus. At the time it moved, it was about a \$3,000,000 bank in deposits, and today its deposits structure is about \$46,000,000 or \$47,000,000, total footings of 52.

Q. Was this growth a result of internal growth or acquisition?
A. Purely internal growth, no acquisition.

Q. All right, sir. Tell us what factors you consider to be important in your effectiveness as a banker. A. Well, I guess it is what I basically grew up with in the National Bank, and that is the ability to do business on an individual level, to solicit and seek business, to commit your loans, to manage your people [864] through your guidance and direction of your board and help you receive from the National.

Q. Do your branch managers have that same sort of authority and responsibility? A. Yes, sir.

Q. Is that the same or different from what you are familiar with with regard to the branch managers of the National Bank? A. That they have—they operate the same.

Q. All right, sir. Are you familiar with the operations and the methods of operations of the presidents of the correspondent associates who are involved in this? A. Yes, sir.

Q. How do you regard them? A. They operate the same.

Q. Can you tell us whether or not there is any internal competition or rivalry among branch managers and presidents of affiliates. A. I think there is internally. We have a goalpost and we—Emory was denied access to a new trade area, a new market for it, namely, the City of Decatur on the square, so to speak. And we now have a National Bank there. We have helped that bank get some customers, but yet, at the same time, on the goalpost, [865] I need to show up good, too, so, internally we do have competition.

Q. How did that access to the City of Decatur get denied Emory? You said it was denied; what were you talking about?

A. We had applied for a branch of Emory under the countywide branch banking law.

Q. And it was turned down? A. And it was turned down.

Q. That is what you are talking about? A. Yes.

Q. Do you feel that you can do what the competition requires you to do in selling your banking products and services? A. Give me that again.

Q. Do you feel that you can do what competition requires you to do in selling your bank's products and services? A. Yes, sir.

Q. Getting business. Is your board of directors just a rubber stamp, Mr. Autry? A. No, sir.

Cross-Examination

By Mr. Frisbie

Q. I am not sure if we established it or not, but [866] the C&S Emory Bank is an affiliate bank, is it not? An affiliate with C&S National. A. Well, what do you mean by "affiliate"?

Q. Or subsidiary. A. I consider it a wholly-owned sub.

Q. Okay. A. Except for qualifying shares of the directors.

Q. Is there any such thing as a super subsidiary? A. I heard the term, and I guess there is.

Q. Mr. Autry, how are you familiar with the internal operations of the correspondent associate banks, the question in this suit? A. Well, having been in the corresponding bank department, they did not come under the correspondent bank department, but in various of the C&S National schools that we have attended, we have discussed various phases of banking together. Since I have been at Emory, we has discussed various phases of banking together. I remember one school in particular we attended, all of the presidents of the five percenters, super correspondents and correspondent associates, on international banking and how we could take international banking and use it in our own shop, put it into our own operations, sell it to our own customers through international. So, we talk with each other an awful lot.

[867] Q. You never worked for a correspondent associate bank in any capacity; is that correct? A. Only relieving for vacations and emergencies, I have worked for Avondale, DeKalb Bank, and I worked for Buckhead before Buckhead was merged in as a branch of the National Bank.

Q. All right. But none of those correspondent associate banks are involved in this lawsuit. Is it correct to say that you have never served in any capacity with those, as an officer or director of those banks? A. No, sir, I have never.

Q. That is a correct statement? A. That is a correct statement.

Q. And your knowledge of the internal operations of those banks is limited to classes you have attended which were also attended by members of the management of these correspondent associate banks? A. No, sir.

Q. And discussions with these persons who were officers or in the management of these banks? A. Well, unless you would want to consider that my cashier works with the cashier of each one of these banks in any trouble that they may be in, if they are out of balance or if they have trouble in their call reports or this sort of thing, Emory helps out. We [868] kind of serve as a guidepost for them. They come over and we help them.

[869] Q. Who owned the majority of stock of C&S Emory? A. The Citizens and Southern Holding Company.

Q. And who votes this; do you have any knowledge of who votes the stock held by C&S Holding Company? A. It's voted by proxy and by different persons named to vote that proxy. I would say different persons' names are on it. Since I have been there, proxies have been voted three or four times. I think there has been a different person each time than someone who is designated by the holding company.

Q. Does Mr. Hall ever sign the proxy statement? A. No, not since I've been there.

Q. Are there any officers or directors of the Citizens and Southern National Bank on your Board of Directors at the present time? A. Yes, sir.

Q. Are they voting members? A. Yes, sir.

Q. Mr. Autry, is there any doubt in your mind that if Mr. Hall came to you with his stock certificates in his hand in the name of C&S Holding Company and said, "Mr. Autry, I want you to call a special meeting of the Board of Directors and present for a vote the matter of changing the service charges on our checking accounts," [870] don't you feel sure that such would happen and such would be passed if it were so desired? A. Well, legally speaking, he owns—if he comes out under proper credentials and he owns the amount of stock the holding company owns, he has a right to hold it. It's immaterial what we think. I will say to you, I have been in my stockholding meetings, I imagine you are referring to the rubber stamp Board. Right after I went to Emory we had a deficiency, what we considered a small deficiency in our deposits to capital ratio and rather than trying to float any new capital issue, we decided we would withhold dividends, and I remember very vividly there were one or two directors who were quite outspoken, that they couldn't see the long-range value of leaving the dividends in the bank and letting the depreciation grow. They wanted their money even though they had to pay tax on it.

We had quite a discussion on it. Naturally, when it gets down to voting the stock, yes, the holding company is going to win. That's all cut and dried.

Q. One more point I want to clear up. Is it not true that four and a half percent is the legal maximum that can be paid on regular passbook savings? A. No, sir, I believe it's four. I may be wrong. But, if it's four and a half, and you don't leave it in a certain period of time, it reverts back. I think regular [871] passbook is four.

Mr. Sims: I have no further questions.

The Court: You said you were denied the opportunity to merge with the Decatur National Bank?

The Witness: We applied under the State. We are a State bank and applied.

The Court: You are a State bank?

The Witness: Yes, sir. We were denied to branch. I believe the denial came from the Fed rather than the State.

Mr. Hodgson: I can state that the denial of the application for a branch in Decatur by Emory Bank was denied by the FDIC. At the same time, the mergers were approved. Subsequently, the National Bank just recently has obtained authority to open a branch in Decatur from the Comptroller of the Currency.

The Court: Okay, you may step down.

Mr. Hodgson: Judge, one way or another we have had eighteen witnesses on the stand. Some of them were quite short. This is all we have been able to scrounge up for today with the exception of Mr. Gellerstedt. He said he had to go meet the Jamaican Prime Minister. His testimony will be very brief. If we could just suspend for a short time——

[872] The Court: We will recess for fifteen minutes.

(Whereupon, a short recess was taken.)

[873]

L. R. GELLERSTEDT, JR.,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Doyle

Q. Would you state your name for the record, please, sir. A.
L. R. Gellerstedt, Jr.

Q. What is your business, Mr. Gellerstedt? A. I am a general contractor, president of Beers Construction Company.

Q. Have you had any contacts, past or present, with the C&S Bank? A. All my life.

Q. Would you tell us about it, please, sir. A. Yeah, my dad came with the C&S Bank when I was two years old. He was a national bank examiner. We moved here, so I was raised the son of a C&S bank officer. And our company does business with the C&S Bank, and I have served in various and sundry capacities on a C&S Bank's affiliate board of directors.

Q. Have you also had occasion to serve, in addition to your employment capacity, in connection with the City of Atlanta Chamber of Commerce? A. I am the president of the Chamber of Commerce [874] this year and have been affiliated with the Chamber for a number of years.

Q. Have you had occasion to have contacts with the C&S Bank of Sandy Springs? A. I was one of the original directors on the C&S Bank of Sandy Springs when it started. I believe that was back in 1960.

Q. And its name at that time was—— A. Citizens National Bank of Sandy Springs.

Q. Citizens National Bank of Sandy Springs? A. No, it wasn't—yes, it was Citizens National Bank of Sandy Springs, and we changed it to——

Q. How did you happen to become a director for that bank? A. I got a call from Mr. Mills Lane one day, and he asked me if I would come up to his office. I went down and he said he needed to start a bank out in the Sandy Springs area, and he said, "I need some people to be on the board of directors." I says, "What has that got to do with me?" He said, "I want you to be on the board of directors." I said, "I am a contractor; I went to Georgia Tech; that is a technical school." He said, "I need somebody to be on the board of directors," and so I

said, "Well, if you tell me to do it, I will." So that is the way I came to be on the board.

[875] Q. Did you have meetings with regulatory authorities when you opened? A. Yes, had them in your law firm's offices. We were interrogated by several agencies, and I can remember very well them asking me what I was doing there. I told them because Mr. Lane said we ought to do it for the area of the city, and I told them I had no banking background or anything, but I had been very much connected with Mr. Lane and the C&S over the years; that I thought this was something that was needed out there and looked to me like it was an area that was going to grow. I was all for it.

Q. Did you have a concern as to what you could bring to the management or the direction of the bank? A. I could bring very little. I had been raised as a banker's son; I guess he didn't think I had enough sense to be a banker. That's why he sent me to a technical school. No, I didn't have any thoughts.

Q. What was your thought about where that bank was going to get its management and direction? A. From the C&S Bank, because the whole thrust and organization, Tom Cook was then an officer of the bank, was the one out pushing the paper, selling the stock and doing all the leg work for it. So the entire organization of that bank came right out of the main [876] office over here, and, consequently, we knew full well that all the time we would be tied in with the help of the C&S Bank to move that bank forward.

Q. Did you have any contact as a contractor with regard to the initial banking quarters of the bank? A. Yeah, I actually developed—we rented a space in a shopping center out there, and I actually developed the space, and I remember we were trying to meet a certain time schedule and it was rather tight. We didn't have all of the approval of the various and sundry agencies, and we were spending money out there. I know I asked Mr. Lane what is going to happen if we don't get this

bank approved. He says, "We will open Lane's Pawn Shop out there." So, yes, I did develop the area and it was opened, then, I believe it was, in December of '60.

Q. When the bank opened, did C&S people have any contacts with the opening of it? A. Oh, yes. They were involved in publicity involving our opening ceremonies and were very much in evidence.

Q. Was the bank known as a C&S supported and sponsored bank? A. There wasn't any question. I think all the people that bought stock bought because of their ties [877] with the C&S Bank. It was always conceived that once the banking laws were changed, that this bank would come into the system. Because there wasn't any doubt that this was an area of town that was going to grow in a hurry, and it needed bank facilities up there. So I feel that all of us that went on the original board of directors of that bank felt that once the banking laws were applicable, we would come into the C&S system.

Q. Has the bank been able to serve the Sandy Springs Community, in your opinion? A. I think it would have served it better if it had been a branch of the C&S Bank, in my own personal opinion. But, yes, it served the community; the bank's history is on record. It grew and it grew fast. It has had, I think, a very good effect up there. But, of course, the area itself has developed with such a tremendous rate of speed, I frankly feel it would have been better for the area if it had been a C&S Bank earlier.

Q. At the time, in change of management from Tom Cook to Lou Fortuna, was there any question in your mind, the board's mind, of disaffiliation from the C&S? A. Oh, no. When we got into the obvious problem, when the auditors were out, we had one real bad loan; I believe it was a fellow by the name of Eidson, if I [878] remember, Eidson and Seiden, it became evident then that we had some problems in our loan portfolio, and when we dismissed Tom Cook, Howard Starks brought out

Lou Fortuna, brought him off of vacation, and I believe that Lou at that time was out at the Emory C&S Bank, or one of the other banks, so there wasn't any question about where the replacement came from or was going to look for him. He came out of the C&S system.

Q. From your position at the Chamber of Commerce and your experience you have outlined to us of growing up in Atlanta, I wonder if you would give us your view on the relationship of banking business in Atlanta⁴ to Atlanta's economic growth. A. I don't think there's any question but that the banking portion of a city plays more of a part with how that city grows than anything else. If you have got a banking community that is very staid and very conservative, a community grows in one way. If you have got a banking community who has faith in the future, who is willing to look at things a little bit differently, it grows in a totally different way. I will never forget that my dad, when he was at the bank, Mr. Lane Young was president of the bank, I remember they gave a testimonial dinner for Mr. Young when he retired. And he said one of the guys got up to give a little say about Mr. Young, [879] and said he came to the bank, didn't know anybody, went in Mr. Young's office and told him he wanted to borrow \$500. Mr. Young said that he would be glad to lend him the \$500. That shows what a man of character he was; he took a mortgage on my car, a mortgage on my furniture and my house, and he lent me the \$500.

I remember that versus Lane, when he would go into the lobby and say, "I got money to sell." There's some things I have seen involving the money business in Atlanta. We have got four big banks in Atlanta. I can remember very vividly when we had a drought in South Carolina and the farmers were having a terrible time there, and C&S got some water wagons; I think they got them out of Army surplus, and sent them over to South Carolina. I can remember when the first industrial development department was opened up, when they hired the boy that was in the Columbus Chamber of Commerce to come

here to do nothing but get and develop commerce, move them out in Atlanta, very, very vividly. They brought Carling Brewery out here, which was a vivid thing. What Mr. Lane did, such as the stadium, why he put the money for the plans on the stadium. Once again, before all the legalities had been tied up, and he ended up with a \$750,000 bill for a set of blueprints, and I asked him what he was going to do if the plans weren't [880] approved, and he says, "I guess I will be the only citizen that owns a set of plans for the stadium."

I remember how he bought the property for the Governor's Mansion, did all of this.

No, the banking industry in Atlanta has been, in my opinion, probably the real reason that Atlanta has experienced the wonderful growth that we have had, and I think Mr. Lane has been the leader; if not the one, one of the leaders in this particular field.

[881]

Cross-Examination

By Mr. Sims

Q. Mr. Gellerstedt, you said that you thought that the bank out in Sandy Springs would have better served the community if it had been a branch of the Citizens and Southern. How; why is that? A. I think it would be direct management contact rather than through the Board. In other words, the Board served but classically, the management direction from the bank was coming from the Citizens and Southern. I think we felt like a direct contact would have been a better thing, rather than the way it was. I think the loan capacity would have been different if it had been directly with the Citizens and Southern Bank. I think certain other features would have helped the normal growth of the area better.

Q. Would you be able to be more specific in what you mean by other features? A. I think the banking community probably has more to do with the area of growth, the type

growth you have than any other thing. I think if you have a national bank out there, I think there would have been some direction so far as planning and zoning are concerned that you don't have with a smaller bank like this.

I think certain direction so far as getting[882] other thrusts of particular movements of companies in the area. I can see a lot of things would have been different if you had a national bank there.

Q. Would you say that during the time you served on the Board of Sandy Springs that the Board of Directors was merely a rubber stamp? A. Basically, yes.

Q. Any exceptions to that? A. Not that I can think of. We joined up with the Citizens and Southern profit sharing plan for our employees, every time they would change one of their plans, we would change our plan. No, we basically didn't give any management direction.

Q. Were you on the Board of Directors at the time Tom Cook left the bank? A. Yes.

Q. Was there any discussion about the question of whether or not Mr. Cook would leave for any length of time prior to the time he left? A. Not that I remember. As I say, the auditors were, we knew we had this bad case with Edson and Seiden, which is a relatively large, looked like, loss for the size bank that we were. The auditors came in and, as I remember, the chain of events, it was relatively fast after that. We decided that Tom ought to leave.

[883] Q. Now, you said that you think the banks are important. A. The banks in the community are very important.

Q. In your own opinion, do you believe that the level of competition between banks and the community makes any difference as to the service they provide to the community? A. I sure do. I've never seen competition quite as severe as it is in the banks in Atlanta. I am in the contracting business,

which is relatively a competitive field itself. I've seen, in this city, a fantastic competition between Trust Company, C&S, Fulton and First National, over the years. Now we have the Bank of Georgia. It's a very tight competition situation as it is.

Mr. Sims: I have no further questions.

The Court: You may step down.

Mr. Hodgson: Judge, we have no more witnesses available for today.

The Court: Let me check with you where we are, run through your list. Of course, the first two that are on there, Messrs. Jackson and Dunn.

Mr. Hodgson: Jackson and Dunn, Mr. Jackson will be available as our first witness on Monday. Mr. Dunn will not be available until Monday afternoon. Of course, Mr. Jackson is the former Superintendent [884] of Banks and Mr. Dunn the present commissioner.

The Court: Are you going to call Mr. Stevenson? I noticed you called two in that category.

Mr. Hodgson: No, sir, the Feds, as I understand, are reluctant to permit the witnesses to testify.

The Court: He will not be here.

Mr. Hodgson: He will not be called.

The Court: Messrs. Cleveland, Bruner, Robinson, Williams, Presley?

Mr. Hodgson: Presley will not be available to come from Augusta.

The Court: Mr. Dick Allen?

Mr. Hodgson: It's problematical about Mr. Dick. The mayor's going to Africa, Mr. Allen's gone again. We urged him not to let a fly bite him.

The Court: But, he is out as far as we are concerned? He will not be a witness. Chatham?

Mr. Doyle: No, Chatham is not going to be.

The Court: Munford?

Mr. Doyle: Yes, sir.

The Court: We have had Mr. Gellerstedt. Connelly, I notice you have got his deposition. I believe.

Mr. Hodgson: Mr. Connelly was among the five [885] percenter presidents who has testified to by proxy, testified by proxy.

The Court: We had him a little bit different paragraph from the others.

Mr. Hodgson: Yes, sir, he was included as a five percent president, really.

The Court: You won't have him. That leaves Mr. Baxter.

Mr. Hodgson: Yes, sir.

The Court: So, let's see how many that gives us.

Mr. Hodgson: I believe that's about nine. We may have some disappointments among them. Their absence probably won't disappoint the Court.

The Court: From what I see, then, there should not be any lengthy testimony except that of cross-examination of Mr. Baxter and if Mr. Kinkaid will follow your example there we will have no problem.

Mr. Hodgson: I believe we are in excellent shape, Your Honor. I think we will conclude Monday evening or Tuesday morning.

The Court: I think we will recess until 10:00 o'clock on Monday.

(Whereupon, court recessed at 3:30 o'clock P. M., to reconvene at 10:00 A. M., Monday, October 2, 1972.)

[887] The Court: All ready?

Mr. Hodgson: Yes, sir.

The Court: Fine.

Mr. Hodgson: So Your Honor will have some notion how we think the day will be going, so we may make some plans, we will be planning to call this morning Mr. King Cleveland, president of the National Bank of Georgia, and Mr. W. M. Jackson, former Superintendent of Banks of the State.

The Court: All right.

Mr. Hodgson: And Mr. Walter Eaves, and last in the morning, Mr. Evans Bruner, and Mr. Mack Robinson.

The Court: In that order?

Mr. Hodgson: Most likely. Mr. Robinson asked that he be allowed to go on late morning to suit his problems, and then Mr. Jack Dunn, the current Commissioner of Banking, who cannot be here until after lunch.

The Court: All right.

Mr. Hodgson: Which will leave us with three witnesses, two of whom will be quite brief, Mr. Jimmy Williams, who is coming in the first thing in the morning, and Mr. [888] Alex Munsford, who has been out of the state, and we haven't been able to reach him. We will try to get him this afternoon and, if not, the first thing in the morning. And then Mr. Baxter.

The Court: How about Mr. Dick?

Mr. Hodgson: Mr. Dick will not be testifying or available.

The Court: All right.

Mr. Hodgson: Mr. Cleveland, will you take the stand, please, sir.

Don, did you pick all of that up? I guess I was mumbling a little bit.

Mr. Kinkaid: Yes, I think I got it all, thank you.

KING CLEVELAND,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your full name for the reporter, please, sir. A. My name is King Cleveland.

Q. What is your job, Mr. Cleveland? A. I am chairman of the board and chief executive [889] of the National Bank of Georgia.

Q. How long have you been with the National Bank of Georgia? A. I have been there almost eleven years.

Q. What has been your course of duties with National Bank of Georgia since you have been there? A. I started at the mid-management level when I first went with the bank, and I have been in primary charge of the bank's growth and development for the last six years.

Q. Previous to that, where were you employed? A. I was with the C&S Bank in Albany, in the trust department.

Q. During your time with the C&S, were you always with the trust department? A. Yes, always.

[890] Q. As chief executive officer of National Bank of Georgia, are you familiar with the metropolitan Atlanta banking market? A. I'd say so, yes.

Q. Why is this? A. Well, it's my business to be familiar with it.

Q. I'm going to ask you several opinion questions about this, Mr. Cleveland. I'm going to ask you first, whether or not in your opinion as the chief executive officer of a major bank in this area, if in your opinion, this area is dominated by or concentrated in one or a few banks, relatively to banking markets as you know them, through the country. A. No, I would say certainly not.

Q. What is the reason for your opinion? A. Well, because we are the smallest of the five major banks and we have had no problem in increasing our share of the market. Although the competition is fierce between the banks in Atlanta, it's a clean market, a good market, growing community. I would say that this city probably has the most aggressive banking competition of any cities in the south and probably in the country.

Q. Are you familiar with the fact that this lawsuit relates to attempts by the Citizens and Southern National Bank Holding Company, Emory and East Point, to [891] merge Citizens and Southern Sandy Springs and North Fulton Banks into the Citizens and Southern East Point Bank and Citizens and Southern Chamblee—excuse me—Park National and South DeKalb Banks into the Citizens and Southern Emory Bank? Are you familiar with that fact? A. I am aware of it.

Q. Do you have any opinion as to whether or not if these mergers go through there will be any lessening of banking competition in this area? A. I don't think it makes a bit of difference one way or the other.

Q. Why not? A. The market is open to all of the banks in Atlanta. If we want to do business in those areas, we can make an economic decision to do so. What the Citizens and Southern does with their business in those areas doesn't make any difference to us.

Q. From a competitive point of view, do you have any opinion whether or not these five banks ought to be merged

into East Point and Emory or not? A. I don't think it makes a bit of difference. They are recognized as C&S Banks in those communities. Whether they are merged into the existing organization or remain as they are, I don't think it makes a bit of [892] difference from a competitive standpoint.

Q. Could you have done what the Citizens and Southern did? A. Yes, if we had the imagination and the intestinal fortitude and been able to take the business risk involved, doing what they did, we could have done it, yes. So could any other bank in Atlanta.

Mr. Hodgson: No further questions, Mr. Kinkaid.

The Court: All right, you may cross-examine.

Cross-Examination

By Mr. Stern

Q. May we have one moment.

Mr. Cleveland, what is the basis of your opinion that this is a highly competitive market? A. I base it on my day-to-day experiences in competing with other banks in the metropolitan community on a day-to-day basis for both growth, loans, branch locations and all of the other forms of banking.

Q. What other markets were you considering when you were comparing this with the competitiveness of this market?

A. Primarily, cities the size of Atlanta, Chicago, Dallas, cities of this sort, where I have the experience of sitting in conference with these bankers from these communities and hear their discussions of their market [893] development, bank expansion.

Q. Have you personally conducted banking in any of these cities? A. No, I have not.

The Court: Anything further from you?

Mr. Hodgson: No, Your Honor.

By the Court

Q. Let me ask you a couple of questions. You apparently considered some geographical area in making this statement, even though the boundaries may have been fairly loose. What boundaries did you consider for the market that you say is highly competitive? A. Primarily the metropolitan area, two counties, DeKalb and Fulton.

Q. Do you consider the competition is fairly intense throughout or does it vary in that area? A. Well, Your Honor, we consider it very intense throughout the two counties. That's based to a large degree on the analysis that we made when we started our branch banking program and we are trying to determine what branch locations may be desirable from our standpoint. We made an analysis, statistics in almost every community in the two counties and found places where we wanted to put a branch.

[894] The Court: Well, do you find that the competition to which you refer is primarily there with the largest four or five banks, or does the competition include more than that?

A. It includes more than that. There are several independent banks located in the metro Atlanta area, where we felt that they were so strong in that particular market that we were not encouraged about opening a branch across the street from them.

The Court: And do you find that they compete as effectively in the areas which they serve as the largest banks?

A. Yes, sir, that was our opinion. Because of their ties in the community, that it would be a more difficult market to compete with them than it would one of the large Atlanta banks.

The Court: Anything further from this witness?

Mr. Hodgson: We have no further questions.

The Court: Step down. Thank you.

Mr. Hodgson: Mr. Jackson, please.

W. M. JACKSON,

being first duly sworn, was examined and testified as follows:

[895]

Direct Examination

By Mr. Hodgson

Q. State your full name for the Court, please, sir. A. W. M. Jackson.

Q. Mr. Jackson, what is your job today? A. I'm retired, former Superintendent of Banks.

Q. How long have you been retired, Mr. Jackson? A. Since January 1st, this year.

Q. Of this year? A. Uh-huh.

Q. Would you tell the Court briefly, sir, the course of your career in the Banking Department, how you got there and how you developed. A. Well, my career in the banking business, banking industry, began about forty years ago. As a matter of fact, it began during World War I. I was in the banking business for about fifteen years, and then in 1945, I became associated with the State Banking Department as bank examiner. I examined banks in the state system for about eight years and then was appointed Assistant Superintendent of Banks in 1953. I remained Assistant Superintendent of Banks until 1963; in July of 1963 I was appointed Superintendent of Banks by Governor Carl Sanders for the term of four years; and then was reappointed at the expiration of that four-year [896] term by Governor Maddox for an additional four years, which expired January 1st, this year, at which time I retired. About twenty-six years with the State Banking Department.

Q. Would you describe to the Court in broad terms the functions of the State Banking Department as they existed under your administration? A. Well, the prime responsibility of the Superintendent of Banks in the Banking Department is

to see that state banking in this state is conducted in a safe and sound manner in the public interest. The duties are to charter new state banks, approve applications or disapprove applications for branch banking in the state; to approve mergers and liquidations in the state; to examine all state banks to see that they are complying with the state banking laws; and to see that management is competent and conducts the banking business in a safe and sound manner. That's the general principal function, to examine each state bank once each year.

Q. In connection with this, do you coordinate your business with those of other regulators of banks? A. We work very closely with the Federal Deposit Insurance Corporation, and also the Federal Reserve Bank. We have state non-member banks and state member banks. The Federal Reserve have some supervision over [897] member banks, while the F.D.I.C. has supervision over non-member banks. So we work closely with those two agencies in the supervision of our state banking system. The state, of course, can—only charters the banks; those agencies do not charter state banks. The F.D.I.C. is an insuring agency that insures deposits, and their functions are very similar to the state functions in the supervision of our banks.

Q. Mr. Jackson, when you are examining into questions relating to new charters, branch applications and the like, is one of the factors you take into consideration the convenience and needs of the communities to be involved? A. That is correct. That is one of the primary factors, bases.

Q. One of the several factors. I would like to come back to all those factors in just a moment. We might as well do it right now.

What are the factors categorically, by statute, that you are obliged to inquire into with respect to charters and branches? A. When applications are filed for charters, and the same criteria applies under the law to the granting of branch banks

in the state, there's five basic factors that we govern these applications by. One is the [898] financial condition of the new bank at beginning of business. It involves a good many details, which we won't relate right here.

The second is the adequacy of capital of the proposed new bank. The third is the management factor of the bank, and the fourth is the convenience and needs of the community in which the proposed bank is to be located, and the future earning prospects of the bank, and such other facts; and circumstances that have a bearing on the proposed bank in the particular locality includes competition and any other factor that might be relevant to the application.

Q. Do these same factors apply with respect to applications for conversion of a national banking association charter to a state banking charter? A. They do when relevant, they do; all of those factors.

Q. Now, Mr. Jackson, in your official functions with the Department of Banking over the years, did you regularly come in contact with representatives from the Citizens & Southern National Bank Holding Company and affiliates? A. Yes, most—in every instance where we examine affiliate C&S banks, the five percenters, where there were criticisms or needs for adjustments in [899] management or capital or earnings and so forth, as a general rule, I always contacted Mr. Joe Hall, who had general supervision over the C & S affiliate banks. And when there was a need for any adjustments or improvement in the conditions of the bank, I would generally talk with Mr. Hall about it, and it was forthcoming immediately, such as capital increases or capital notes on debentures and what-have-you, general information. Finally got better results by that than going direct to the president of the particular bank. Of course, we did talk with the presidents of each of these banks, but I relied primarily on Mr. Hall for the corrections that we have covered.

[900] Q. Now, when the Citizens and Southern—well, let me ask the preliminary question. Do you recall the conversion of the Citizens and Southern Chamblee Bank and Sandy Springs Bank from national association into state banking charters? A. Yes.

Q. Do you recall the chartering of Citizens and Southern North Fulton and South DeKalb by your office? A. Yes.

Q. In those actions by your department, I presume they were all four favorable? A. They were all favorable but any condition that might have come up; which we did have in one instance, one of these bank's capital in conversion from a national to a state bank was below our state average of the requirement and as a condition for that bank to convert, I required Mr. Hall, or agreed with Mr. Hall, that the capital after conversion would be increased to that amount that we would ask for.

Q. And that was done? A. It was forthcoming, yes.

Q. Now, in considering these applications for two charters and two conversions, you were aware of the fact, the relationship as you described it, affiliation with the Citizens and Southern National Bank Holding Company; were [901] you not? A. That's correct.

Q. And the supply of the management and capital? A. That's right.

Q. And did you consider these to be favorable factors in considering the applications? A. I did.

Q. They carried the name Citizens and Southern, did they not? A. That's correct.

Q. Did you have any objections to their being separate corporations? A. None whatever so long as they didn't conflict with some bank in the immediate locality or area; might have been in the C&S system and change the names to the C&S

system, the bank. We did have one or two objections but they were corrected, you see.

Q. Can you recall what those objections were, so that it's not unclear on the record? A. The Citizens & Southern Bank of a certain community was too near the Citizens Bank of that same community and we required Citizens and Southern to eliminate the Citizens and Southern and adopted the C&S symbol.

Q. Just the C&S symbol rather than the full name? [902] A. Right; that's correct.

Q. Mr. Jackson, do you recall the application of South DeKalb, Citizens and Southern South DeKalb Bank, at the time of this organization, particularly? A. I think so.

Q. Do you remember that Mr. Warren Berry was proposed to be president of that bank? A. That's correct.

Q. Do you recall where Mr. Berry was coming from? A. The C&S system.

Q. Did you consider the application itself as being one of Citizens and Southern system? A. Banks, yes, sir.

Q. Did you expect that the Citizens and Southern South DeKalb Bank would have the same general policies, standards and support, management and name as the Citizens and Southern other affiliated banks? A. That's correct.

Q. Mr. Jackson, did you consider with respect to the applications for new branches by Citizens and Southern East Point and Emory, these very mergers that are here under consideration by this Court—I'll put it that way—in connection with the application for the mergers, were not applications filed with your office disclosing the mergers and applying for state branches of Emory and [903] East Point? A. Sure.

Q. What was your action on those applications? Was it favorable or unfavorable? A. It was favorable.

Q. Why was it favorable? A. Well, I could see no adverse effects on competition in those particular areas and it makes little difference in the public's minds. They look at the bank as the C&S Bank anyway and I had no objections from any source, from any banker in the immediate area or locality or the state, and the mergers met all of the criteria of the five, six principles that I enumerated a while ago; I had no choice other than to approve it.

Q. Mr. Jackson, you heard me ask Mr. Cleveland, you heard his response to this question, I'll ask you the question also, do you have an opinion as to whether or not the Atlanta metropolitan area is either concentrated or not concentrated in several banks in the area and whether or not there is much competition here among the banks? A. Well, I would think that. Of course, there is competition among banks in every locality in Georgia, where there is two or more banks. Atlanta is not unlike any other major metropolitan city in the nation. There is competition in all of the major cities. There is [904] competition in, very strong competition in Fulton County, among the banks, that's inherent in the banking business. It's inherent in any business where there is competition in it. And I think that, and feel that, competition in the banking business is pretty well diversified among five, six of the major banks in Atlanta which is a healthy condition, and I at the same time feel that the major banks, larger banks of Atlanta, Georgia are going to adequately serve the banking needs for industry, commerce and the public in this state, they've got to grow and expand with the economy. They've got to be allowed to expand and grow to meet the financial money markets of the nation as well as foreign money markets. We do have banks here that have branches presently in foreign countries and you can't do that on a small shoestring basis. If all the banks in Atlanta are going to be stifled by extreme regulations, then I think our banking industry in Georgia would be harmed.

I think it's necessary that our banks grow and expand with our economy in the state. I don't think there is any undue

competition among the state banks. It's not going to hurt competition in the locality.

We have had over the past twenty years probably equal number of new banks as well as merged banks. I see no ill effects it has on banks in Fulton County. The [905] same thing in DeKalb County.

Mr. Hodgson: We have no further questions, Your Honor.

The Court: Cross-examine.

Mr. Kinkaid: Just one moment, please, Your Honor.

The Witness: Judge, could I add one point to what I already said? I'd like to add further, Mr. Hodgson, that as far as the approval of those applications for merger was concerned, you understand, as I stated, I had no objection from the bankers of this area, locality, neither did I have any objection from the Federal agencies that had supervision over these banks. I contacted all of them, you see, so I had no alternative other than to approve it.

Cross-Examination

By Mr. Kinkaid

Q. One small point has occurred to me during Mr. Jackson's testimony. As I recall, Mr. Jackson filed an affidavit several months ago in connection with the motion to lift the statutory stay, I believe, that exhibit has been offered. That affidavit, rather, has been offered here as an exhibit. I'm wondering whether that affidavit has been withdrawn in view of Mr. Jackson's live testimony today?

[906] Mr. Doyle: It has been withdrawn.

Q. Mr. Jackson, you were talking about competition in Atlanta. Could you tell us what is the geographic areas you had in mind when you were describing what you feel is good competition in this area? A. Well, the trade area of any bank is the area in which it expects to get its banking business from. Now,

there was a time in the history of banking in Atlanta when just the city limits of Atlanta was considered its trade area. But, communities can outgrow the banking trade areas and expand out and overflow into the adjoining communities which become a part of the trade area of metropolitan Atlanta banks.

[907] I would say now your trade area is—embraces metropolitan Atlanta, which would include Fulton and DeKalb Counties at the present time. Now, in another twenty-five years it might take in another county, but I think the Atlanta banks have got to follow, and that brought about your countywide branch-banking field. They have got to follow their customers and their trade area as it expands. And I think it expands to DeKalb County at the present time. That is part of metropolitan Atlanta.

Q. Now, Mr. Jackson, could you take a rough guess as to how many banks you chartered while you were Superintendent of Banks? A. In the state?

Q. Yes, sir. A. I had those statistics in my office, but I would say, since I was Superintendent, it would be just a guess now, I'm thinking more perhaps in the whole state, probably sixty, maybe seventy-five during my term as Superintendent.

Q. Yes, sir. A. Now, I would say probably in the Atlanta metropolitan area we have had twelve or fifteen new banks chartered. I think as time goes on and our expansion of our economy continues, there will be more [908] new banks chartered in the metropolitan area; wherever there is a need, necessity for the bank, whether there is a branch or not, we will charter a bank if there is a need for it.

Q. In connection with chartering of some of the banks involved in this litigation, like South DeKalb, for example, you mentioned that C&S relationship, if I recall you correctly, was a factor in your—a favorable factor in your decision to grant the charter. A. Yes.

Q. In that connection, I would like to ask you, can you take a rough guess as to how many of the banks that you yourself chartered as Superintendent, first of all, were organized with assistance from C&S, and then try to guess how many were organized with assistance from other large Georgia banks.

Mr. Hodgson: If Your Honor please, I rather object to "try to guess". If he wants to ask his best recollection, if that is what he is really saying——

Mr. Kinkaid: Well, that's what I mean, sure.

The Court: Try asking him.

By Mr. Kinkaid

Q. As best you can recall, can you give us a [909] figure on that? A. No, I will have to get that question again.

Q. Okay, sure. First of all, well, perhaps I could try to shorten it for you. It might be easier this way. Wasn't it true that most of the banks that you chartered as Superintendent were not started with assistance from C&S? Wouldn't that be a fact?

A. I think that would be a fact, that most of the banks, sure, were not affiliated with the C&S system, sure, yeah. I would say, now getting back to your question, probably there might have been as many affiliated with other major banks in the state or more than the C&S five percenters. See, I only dealt with the C&S five percenters, that is, affiliated with the C&S system.

Q. Yes, sir. A. But there were more, probably, banks chartered with other affiliation of major banks in the state than just C&S, sure.

Q. I gather from what you say, you can recall chartering banks that, for example, were started with the assistance of Trust Company? A. Yeah. See, all the major banks are affiliated with some banks one way or the other as the correspondent relationship. So, the far majority of them were [910] chartered with the correspondent relationships and help from other major banks than the C&S system, yeah.

Q. Yes, sir. And wouldn't that be a favorable factor, also, in your decision to grant the charter to a new bank, namely, it has—is getting assistance from, say, Trust Company and at formation is going to have Trust Company as its correspondent bank? A. Well, as a general rule, you see, a new application, you have got to know who the—is going to be the active management of that bank, you see. As a general rule, in these five-percent banks, well, the C&S—the proposed or the proponents of the bank have asked C&S to help them organize a bank or furnish management for the bank, you see, and, as a reward, I guess, they let them have five percent interest in it. And the C&S furnishes the management for that bank. Now, the correspondent relationship of the banks, sometimes one of these major banks will allow one of their men to go into one of these new banks and run it, which experience would have to meet the requirement for management factor as to experience and so forth, you see. And so they do—it operates both ways. But, I think in most cases the proposed applications that's not a five percent, they furnish their own man, you see, and he may not be with a correspondent bank; he would [911] come from some other bank.

Q. Well, now, did you have cases where—now, these would be banks not being started with C&S assistance? A. Yeah.

Q. In those cases, weren't there cases where the new banks, the new bank's management was found with assistance from the correspondent bank? A. That is possible, yes, yes, sure.

Q. And in those cases, would that be a favorable factor in your eyes, not the only one, but would that be one favorable factor in granting the charter for the new bank? A. Favorable factor because the correspondent suggested somebody to run it?

Q. Uh-huh. A. Well, there again, we're going to base the decision on ability of that man that is proposed to run the bank; of course, the help of a correspondent would be a help, no doubt, to strengthen the management of the bank.

Q. Didn't you, as a matter of fact, check out the people who were going to be running the banks that were formed with C&S assistance? You didn't just take C&S' word? [912]

A. No, we check out each man that is going to be executive officer of the bank.

Q. Whether he comes from C&S or some other bank? A. Or someone else, yes. We have got to know what his experience has been. If the C&S proposes some installment loan clerk to run a bank, we wouldn't approve it. See, same way with any other correspondent.

Q. Do you recall chartering the Peachtree Bank & Trust Company in Chamblee back in about 1960? A. The Peachtree Bank & Trust Company happened to be chartered before I was Superintendent of Banks, and I'm not as familiar with the details of the chartering of that particular bank. I think W. D. Tripp was the Superintendent of Banks at that time, but I feel that—and I think that that was a close affiliate of the Trust Company of Georgia. How much stock they had in that bank at the beginning of the business, I am not familiar with it.

Q. I forgot, you started in '63; is that right? A. '63, yes. But, I do know that I chartered a bank in Sandy Springs for them, and that was an affiliated bank with the Trust Company. In fact, they owned all of the stock in that bank, the directors of the proposed bank, and they furnished management for the [913] bank, and that bank was subsequently merged with the Trust Company of Georgia.

Q. Yes, sir. Mr. Jackson, do you take into consideration the board, the proposed board of directors for a new bank that is applying for a charter? A. Yes, we do.

Q. What do you look for in the board of directors for the new bank? A. Well, our examiners that make these investigations of charters are trained in their investigation. They meet with the proponents of the new bank, have a lot of information to get to fill in to complete the report, and so forth. And then,

they interview each proposed director individually, separately from the group, and they have a lot of questions they want to know and find out what—if there are any affiliations with any other bank; if any agreement has been made to resell or repurchase stock in his bank; how he is going to finance the purchase of this stock, and if there's going to be any repurchase agreements we find out all of that information, as well as his financial standing in the community and whether he has had any, of course, connection with any unfavorable business or dealings; whether he has ever been convicted of any crime or fraud. We don't want men like that on the board of directors. [914] so we go into every phase of a man's life nearly. His education, his family life and everything. Sometimes a man's family life might disqualify him because of family situations. That applies to management even, you see. Yes, sir, we go into all of those factors.

Q. Is one of the things you are looking for in directors of a bank that is being considered for a new charter, is one of the things you are looking for in that bank's board independence of thought, a group of men who will run that bank independently in the best interest of that bank? A. Sure.

Q. Is that a factor, sir? A. Why, sure, sure, absolutely. That is a responsibility of the directors. If he doesn't carry out and meet his responsibilities and the bank gets into trouble, he could very easily have a liability suit attached to him.

Q. I would like to show you something and ask you if you can recall this particular little booklet. Do you recall that, sir? A. Yes, sir. We send that to every proposed director of a new bank when it is chartered.

Q. I note that this appears to have been written in 1967; is that your recollection also? [915] A. About that time, yes.

[916] Q. Do you recall whether the directors of C&S South DeKalb and C&S North Fulton were given copies of this booklet? A. Well, as to the end, the particular bank, I couldn't re-

call. Our men had instructions at a certain stage of the chartering of every bank that this book be mailed to every director of every bank. Now, if they missed one, I wouldn't know. But, as far as to my knowledge, it was mailed to every director of every new bank, that is my men's instructions.

Q. Excuse me. Why were your men instructed to see to it that each new director of a new bank got a copy of this book?

A. Well, we want the directors of every bank to realize their responsibilities, know what the responsibilities and duties are. The law doesn't excuse ignorance of the directors from approving something that's unsound and unsafe. You've got a responsibility to all of the rest of the stockholders as well as the public to operate that bank, see that it's operated in a sound and safe manner.

Q. Do you recall when you wrote that booklet, indicating that the directors of a new bank would most likely need help and advice from a lot larger banks, primarily the correspondent banks in the various respects? A. Sure, that's one of the essential and important [917] things that an independent bank or small bank should, who doesn't have expertise, management expertise, to consult his major correspondent for advice.

Like a customer of the bank would go to the bank and ask for advice on a certain matter, sure that's an essential thing in our banking industry, common practice all over the nation.

Q. Now, on the other hand, you didn't want your Board of Directors to get too dependent on somebody else for that kind of advice, did you? A. Well, if the Board is not familiar with certain phases of banking, I think it's their responsibility to acquaint themselves with it. I know of no better way than correspondents.

Q. Excuse me, Mr. Jackson, maybe we could just take a look and there are an awful lot of things in this book that are very interesting. I don't want to take up your time. A. Thank you.

Q. I enjoyed reading it. Could you look at 14, sir? This would be down, last paragraph where the heading is "The Individual Director." And it says, "A great number of bank directors when they are first elected have no technical knowledge of banking and feel that they must depend on someone who does." That's what you have just [918] been telling us; right, that these people have to get help and advice somewhere? A. Since they are really not bankers themselves, that's right.

Q. This is what you have in mind in this passage? A. Sure, a lot of successful businessmen in the community never had any banking experience, and have to rely, naturally, on somebody to know something.

Q. The next sentence, you say, "This should not become a habit." What did you have in mind with that expression? A. Well, it shouldn't become a habit of relying on someone else to make the decisions for you continuously. I think you should acquaint yourself as far as possible with banking transactions and matters and act upon your own judgment.

Q. Now, when you say relying on someone else, by someone else do you include there another bank, as well as the president of the bank, of the small bank itself? Would you include both of those? A. President of the small bank itself has to consult and confer with its major correspondent many times on banking matters. He doesn't know all the answers himself. His investment policies, loans, credit information [919] on major borrowers, loans in excess of his legal limits, naturally, the major bank is in a position of all that knowledge and credit information and can be helpful to him.

Q. Did you have in mind here that—— A. Frequently they participate with the small bank in loans and what have you, and even sell them loans.

Q. Well, on the other hand, you don't think the Board of Directors should become, should make a habit out of relying on

its correspondent bank? A. Well, I don't think a man that knows what he is doing will rely on somebody else to act for him.

Q. Do you think—was it your intention that the Board of Directors of the small bank make its own competitive decisions? Was that one of the things you did not want them to rely on someone else for?

Mr. Hodgson: I would appreciate it if Mr. Kinkaid would explain to Mr. Jackson what he means by competitive decisions. As I see it, it can go all over the ball park.

Q. (By Mr. Kinkaid) I feel a little funny advising a former State Superintendent what competitive decisions are. I will give it a whirl.

I'm not trying to be presumptuous with you, I would think of things, you could think of many more, the setting of interest rates on savings accounts, determining [920] the amount of charges on checking accounts, setting of interest rates on various types of loans. Would you consider those competitive decisions made by banks? A. Well, of course, the interest on savings deposits is a matter determined by regulations under the FDIC. They have no choice in that.

Q. You mean the maximum determined? A. Yes.

Q. Do all banks pay the maximum? A. To my knowledge, as far as I know. I don't know of any that are under the maximum.

Q. What type of accounts are you thinking of, sir? A. I'm thinking about savings.

Q. Passbook or regular savings accounts? A. Savings, passbook, certificates of deposit, all that's governed by regulations with the FDIC as to maximum interest rates they can pay.

Q. Do you happen to know offhand what the maximum interest rate on passbook savings accounts is today? A. I guess it's four percent on mine. I think that's about the maximum on passbook savings.

Q. Are you aware that C&S National pays three and a half percent on such accounts? A. Well, we don't check every bank to see what the [921] minimum interest rates they charge on, pay on savings deposits and time certificates. We don't, as a general rule, as long as it's not over the maximum rate, we are not concerned whether it's under. That's a matter for the Board of Directors of the bank to determine.

Q. Would you consider that a decision that—— A. Would have to be made by the Board.

Q. The Board would have to take into consideration, among other things competitive, what competition the bank is getting; is that right? A. Sure, of course, banks are placed at a disadvantage, competitive-wise, for deposits with savings and loans. Banks can't compete with them.

Q. Do the banks compete with each other nonetheless for savings accounts? A. I don't think that's something that—two banks in the same locality generally pay the same interest rates, as a general rule. You might have one single bank in a community that might have a minimum under the regulated amount or the maximum. But, it's almost reasonable for banks to compete equally on savings deposits by the same interest rates.

Q. If in the City of Atlanta, if there were—if the interest rates paid on savings accounts, for example, ranged anywhere from three and a half to four percent, what [922] would you say as to competition in that regard among those banks? A. Let me say this. You're talking about paying interest rates in the City of Atlanta, and as I said a while ago, we, as a general rule, don't check every bank to see if they are paying interest under the maximum rate, minimum, whatever minimum they are paying. But, you do have a savings bank here in Atlanta, and I don't know what the interest rate is paid on savings, but I would think that it would be equal to the commercial bank savings account, passbooks. There is a bank that's four to five million dollars less than it was fifteen years ago. I don't know what is

the competition there, lack of paying maximum savings for savings bank or not, but there again, it's a matter of your Board of Directors, the management of the bank. If a bank is going to grow and expand, meet competition in its community, it's got to meet competition and if you don't branch, if you don't do this in your major cities, you are going to dry up, more or less. The fact that management is one of the most major factors of banking. That is one of the greatest problems we have today is banks have grown so large and we have got so many banks, new banks, it's very difficult to find management for all these new banks, I mean suitable, experienced management. That's why you have problem banks. Where you have banks [923] getting in trouble is resulting from management. You have had some testimony right in this case here that pinpointed some of that. You only heard one side of the coin, that management is their problem. When a bank gets into serious problems and you can't get it corrected, what are you going to do with it, liquidate it or merge it? Which is better for the public?

Q. Earlier, when you were talking with Mr. Hodgson, you indicated that one of your primary functions as Superintendent was to check to see that your banks were complying with state banking laws. Do I remember you correctly in that regard?

A. Right.

Q. Did you check to see whether your banks were complying with any laws other than state banking laws? A. Well, if we have any reasons to believe that they aren't, of course, we would check into it. I don't know of any laws other than regulations of the Federal Reserve Bank and FDIC that they would be in violation of.

Q. Mr. Jackson, what I have specifically in mind was the Federal Anti-Trust laws. A. Yes. Yes, sure, we take that into consideration, as I gave you one of those factors, six major factors, competition in the locality. Sure, we take that into consideration, and I will say this, that in twenty-five [924] years

that I have been with the Banking Department, we have never chartered a bank that ever got into trouble for lack of business because of competition. Every bank we have chartered exceeded our estimated projections and we take competition into consideration.

Now, value in mind this, that we have rejected more applications than we have approved because the lack or weakness in the needs and convenience in the community. There again, competition comes into it. Sure, we take that into consideration.

Q. In other words, if I understand you correctly, by competition, you mean—— A. Banking competition.

Q. There is too much competition for the new bank or whether there is too little competition and, therefore, a new bank is needed? A. I think very definitely that the needs of the community factor outweighs the competition that you are speaking of. But, nevertheless, the competition is such that you can't warrant the needs and necessity, you can't grant the charter.

Q. And that's what—that's all you have in mind when you speak about looking into competition? A. The Federal laws, yes, we take the competitive factors in mind.

[925] Q. Do you take into mind—are you familiar with the Sherman Act? A. Yeah. I don't know of any—any law that we are in violation of there.

Q. No, perhaps you didn't understand me. Do you check to see whether your banks are complying with the Sherman federal Anti-Trust Statute? A. Yeah, yeah, we checked 'em all. See if they are complying with the Federal Reserve Board Act as to the interlocking directorships and all of that. There's no phase that I know that we overlook.

Q. Did you check—have you checked in that regard with respect to the state C&S banks that you, yourself, have examined that are defendants in this case? A. We give the C&S applica-

tions the same type rigid investigations that we give all the rest of them, of all the factors very definitely.

Q. In what regard? A. As a matter of fact, we restrict—place restrictions to some extent on the C&S five-percent banks. We place restrictions that are not in the law on all the charters of banks.

Q. I am not sure if I understand what you have in mind by restrictions. [926] A. Go beyond just what the law calls for. Well, our state law limits C&S Holding, any holding company to five percent of the stock. Well, there again, if a holding company has got five percent of the stock, we don't allow other associated members of the family to own controlling stock in that bank, you see. The law—the Holding Company Act did at one time, prohibit stock ownership by the associated families of holding companies, but the '60 Act repealed that law completely. Now the law does not prohibit stock ownership by members of the families of the holding company, and it doesn't prohibit, although we limit the amount that a holding company can have less the stocks of the members of its family to not more than twenty-five percent of the stock in that. And the same thing would apply to any other bank or independent bank. We don't want the board of directors of any new bank to own controlling stock in the bank. And I have never granted a charter during my superintendency of office where they owned more than that, perhaps—except in one instance, and that was the one you approved the merger, the Trust Company of Georgia at the Sandy Springs bank, and your own Division approved it.

Q. This is the one—you mean the federal board approved and we did not sue; is that what you mean? Is that what you have in mind? [927] A. No, it wasn't a member of the Federal Reserve system—well, the Trust Company was, that's right; but the affiliated bank at Sandy Springs was not.

Q. Incidentally, Mr. Jackson— A. What difference does it make whether the Federal Reserve Board approved it or not with your department?

Q. You are absolutely right. It doesn't make any difference to us. A. Why wouldn't you act on the non-member, a member bank the same as the non-member bank?

Q. We try to treat all alike, sir. Incidentally, Mr. Jackson—— A. Of course, we can—wait a minute now; we are all professionals and we can agree or disagree, and I disagree with it.

Q. You certainly have that right, and I respect it. Mr. Jackson, in your experience as State Superintendent, can you say whether or not small banks tend to rely on advice given them by their correspondent banks? A. Sure they rely on it to a large extent and degree, yes. When they ask for information and advice, sure, they rely on it. A small bank in the rural communities don't have the—as I said a while ago, the [928] equities that your banks in Atlanta have.

Q. Well, in your experience as State Superintendent, would you say that that reliance by the small bank on its large correspondent results in the small bank being operated virtually as a branch of the large correspondent? A. Well, not as a correspondent, no, but as an affiliate bank, yes. When you take——

Mr. Kinkaid: Your Honor——

A. When you take these five percenters bearing the name of C&S, the general public looks at that as the C&S Bank. They don't know whether it is an independent bank or not, and the C&S management is in with that bank with the C&S name. Now, that is more of an affiliate bank than a correspondent relationship, and it makes little difference in the public's point of view whether it is a C&S independent bank or a C&S branch bank or a C&S National Bank. It makes little difference; that don't change the competition—competitive factor one iota.

Mr. Kinkaid: Your Honor, at this time, I don't know what number we are up to, but I would like several parts of this little booklet that I think are relevant to various issues here, I would like to introduce this [929] as our next exhibit.

The Clerk: 216.

The Court: It is so admitted.

Mr. Kinkaid: May I have just one moment, sir?

By Mr. Kinkaid

Q. I think you were just indicating that these C&S banks, as long as they have the C&S name and management that has been provided by C&S, they are all the same from a competitive standpoint. Are the C&S correspondent associates, nonetheless, were they not nonetheless chartered by you to be independent banks? I am thinking primarily of South DeKalb and North Fulton.

Mr. Hodgson: If Your Honor please, I object to the form of the question, not knowing what independent means; if he means chartered as separate corporations, of course, that is a fact. It is an undisputed fact. But as to what he means by "independent" is another question.

Mr. Kinkaid: What I have in mind is the thing that we have been talking about that you had in your booklet as to the duties and functions and responsibilities of the directors of banks.

[930] The Court: Why don't you ask him if he expected the directors of those banks to live up to what is outlined in the booklet?

Mr. Kinkaid: May I ask your question, sir, just use your question?

The Court: I assume his answer is yes.

A. Yes.

By Mr. Kinkaid

Q. Thank you, sir. A. Now, let's see just one minute.

The Court: Mr. Jackson, I think you have answered, but he threw you a question that could take us a year to answer, I'm afraid. You put it all in a book, and presumably you expected the directors to live up to the obligations that are set out. Your

answer is affirmative, and I think that is sufficient for his purposes.

Mr. Kinkaid: Thank you, Mr. Jackson.

Mr. Hodgson: We have no further questions, Your Honor.

The Court: All right. Thank you very much, Mr. Jackson.

Mr. Hodgson: Thank you, Mr. Jackson.

The Court: We will stand in recess [931] for fifteen minutes.

(Whereupon a recess was had.)

[932] Mr. Doyle: Call Mr. Evans Bruner.

Whereupon,

EVANS BRUNER

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Would you state your name for the record, please? A. W. Evans Bruner.

Q. By whom are you employed? A. Trust Company of Georgia Associates.

Q. In what capacity? A. Executive vice president.

Q. Is Trust Company of Georgia Associates a registered bank holding company? A. It is.

Q. Mr. Bruner, were you the man at Trust Company and Trust Company Associates who primarily had contact with Peachtree Bank & Trust Company? A. Commencing at about 1961.

Q. All right, sir. And the bank had begun approximately a year prior to that time? A. Right.

Q. Focusing on the time when Mr. Charles Ginden [933] was first made president of that bank, which I believe he testified was sometime in 1967, focusing around about that time, did you regularly attend meetings of the Board of Directors of Peachtree Bank & Trust Company? A. Pretty regularly, yes.

Q. Could you tell us at that time whether you attended all of their meetings or was it on the basis of when you were invited? A. Well, it was sort of a standing invitation, but I did get out there most times, but I suspect it is about that time when our own attorney said, "Let's just you don't, don't be constantly in attendance."

Q. All right, sir. And then, thereafter did your attendance change so far as Trust was concerned? A. Yes.

Q. Can you describe it or characterize it thereafter? A. Well, it was when they asked me to attend.

Q. And it was on a frequent or infrequent basis? A. Infrequent.

Q. All right, sir. Did you—or, beginning at that point and continuing thereafter, did you or Trust Company or Trust Company Associates routinely provide regular supervision of the management of Peachtree Bank? [934] A. You say before or after?

Q. After. A. After?

Q. Yes, sir. A. No, if they asked us questions, we would hop on the telephone, and if they wanted to talk about something, I would talk.

Q. You responded to the requests as they came? A. Oh, yeah, yeah.

Q. The negotiations were with the bank and—— A. Oh, yes.

Q. —not with the Trust Company associates? A. (Witness shakes head negatively.)

Q. At that time, their pension plan, I believe, was that the same or different from the Trust Company Bank? A. It had never been the same, as far as I know. It was one they adopted of their own.

Q. When Peachtree Bank hired a man—— A. Wait a minute; it's not a pension plan, it is a profit-sharing plan.

Q. The profit-sharing plan; they didn't have a pension plan? A. No.

Q. When Peachtree Bank hired an employee or a [935] junior officer or an officer, if they hired a Trust Company man, they approached him just the same as if a stranger would have approached that man? A. Well, there are certain courtesies that any business extends to another. When he is going to talk to somebody working for him, if there is a reasonable sort of relationship, they would call up and say, "Listen, you have got a man working with you and I would like to talk with him." They would say, "Well, he is open".

Q. The Peachtree Bank & Trust Company had a board of directors of its own. Would you characterize that as a strong, independent board or as a weak board, or how would you tell us about it? A. It was strong and it was independent.

Q. All right, sir. From your relationship—— A. And we encouraged it, or at least, I encouraged it.

Q. Yes, sir.

From your vantage point at Trust Company Associates, you knew that there was the Citizens National Bank of Chamblee, which is now the C&S Bank of Chamblee, Citizens & Southern Bank of Chamblee? You were aware that it was there? A. Oh, sure, very much.

Q. And you had a familiarity, from your vantage [936] point or a view from your vantage point of the relationship

between that bank and the C&S National Bank downtown? A. It was generally through the eyes of those at Peachtree Bank & Trust.

Q. All right, sir. Would you tell us how you saw the relationship and characterize the relationship between Trust Company Peachtree Bank, on the one hand, C&S and C&S Chamblee, as you have told us you saw it, on the other hand. A. Well, the Peachtree Bank & Trust was one where we—to display the relationship, you sort of have got to say what each—what the one was in Peachtree Bank & Trust, I mean the differences. It was not certainly one of domination. It was a matter of advice and assistance. We did not direct business, redirect business. If somebody was out there and they called and wanted to know who they can do business with in Chamblee, why, of course, we would say Peachtree Bank & Trust. But it wasn't a matter of directing business to that bank. In other words, existing customers; whereas, through the Peachtree Bank & Trust Company's eyes, why, it was fairly open knowledge that at least they said that the C&S would say to customers living in that area that might be doing business with some of their [937] banks downtown, says, "Listen, you live out in Chamblee; why don't you do business with our bank out in Chamblee? They can take care of you, and as far as your capacity is concerned, if they need any more, why, they can get it here, and we know you. But let them wait on you." They, reportedly, would sell portions of even their credit card to that bank for them to own. I don't know whether that is true, but that was the report.

In earlier days, before Gordon's time, why, I remember one occasion when a rather large deposit showed up in the figures, and it looked like a million dollars. Since they don't just appear out of the thin blue, it either was a factor—was accepted as a fact that their major correspondent had made a substantial deposit with them in order to give them some monetary support. Folks in Peachtree Bank said, "How come Trust Company

doesn't do something for us like—". You know, we sort of would like to, but they said, "No, we don't operate that way." That was sort of the difference.

[938] Mr. Frisbie: Your Honor, if I understand Mr. Bruner's testimony correctly here, he is testifying not through his own knowledge at all and not through his contacts at all, but what, through what is heard from various unidentified persons at Peachtree Bank & Trust Company, what they believe is the occasion, relationship over at Chamblee Bank. As such, I would consider that it becomes double hearsay. I object strongly to his testifying any further than from his personal knowledge.

The Court: I overrule the objection. I suspect the appraisal of competition, the way people may react may depend upon double and triple hearsay, in fact. That's what the businessmen have to act upon in situations like that. But, you can point it out on brief the nature of the testimony. You may answer.

Q. Mr. Bruner, based, then, on your vantage point and position where you were and the relationship as you knew it between your position and Peachtree Bank, can you characterize for us the difference, if any, between the relationship of Trust Company and Peachtree Bank on the one hand and C&S, C&S Chamblee on the other as to whether or not it was a closer relationship or more distant relationship?

[939] Mr. Frisbie: Your Honor, again, if I may, we have not established that Mr. Bruner knows anything at all about the relationship between C&S Chamblee and the C&S system, and it would be the same objection, again, this is the fact that we are talking about and not the competitive effect of something that becomes—this should be a fact that he should testify to and establish that he has personal knowledge of.

The Court: Well, I don't think he can testify as to what it actually is, but the effects to the extent that it motivates his actions, Peachtree Bank & Trust Company, he can testify.

The Witness: As I said in the beginning, I have to look at all of these things from a standpoint, through the eyes of Peachtree Bank & Trust because they were my point of contact.

Q. Yes, sir. A. Very definitely, there was an at-arm's-length relationship among friends as correspondents in the Peachtree Bank & Trust. Whereas at the Chamblee Bank, from every source that I've got any information, it indicated a much more inter-working relationship, exchange of business to direction of business, and support of it through employees transferred and that sort of business, even to [940] the extent that we, everything we did was almost measured by it. This is not as much as what the C&S Bank does at the Chamblee National Bank. I said, "Well, that's as far as we're going to go."

Q. Yes, sir. Thank you, Mr. Bruner. He's with you.

The Court: Does the entire Trust Division join the enemy? I've noticed two, now.

Mr. Frisbie: Just for the record, these ties were——

Mr. Hall: ——bribes.

Mr. Hodgson: We tried to supply enough for the whole division, if they needed more.

Cross-Examination

By Mr. Frisbie

Q. Mr. Bruner, is it the substance of your testimony that the Peachtree Bank & Trust Company enjoyed the same relationship with the Trust Company of Georgia that its regular correspondent did? A. Closer.

Q. Closer? A. Yes, sir.

Q. You have stated that somewhere in 1967, some—'68, somewhere around there, you stopped attending regularly the Board meetings at the Peachtree Bank & Trust [941] Company and that was on the advice of counsel? A. As well as their

agreement with the—I say agreement—with the understanding of Peachtree Bank & Trust, I would not be going there.

Q. All right. A. Except as they called.

Q. Was the advice given you at that time strictly to have less attendance or have more infrequent attendance at the directors' meetings or did it extend beyond that? A. That we should do no more for them than we would do for a correspondent bank.

Q. Then, it would be a fair statement to say that one of the main reasons that your relationship with Peachtree Bank & Trust Company lessened, the main reason that your policies and relationships diverged was because your attorneys advised you of this? A. I was having a lot of fun doing it, yes.

Q. Does the term retail oriented bank have any particular meaning to you? A. Yes, sir.

Q. Could you explain what a retail oriented bank as opposed to a wholesale oriented bank would be? A. I can explain what my idea is, having to do with consumer banking more than it would be, as a greater proportion of your business, I think, where you have, [942] certainly, if your larger customers, where your livelihood depends on the walk-in customers and the ordinary man on the street and you must do business with him.

Q. Is there any one bank in town that is generally known as a retail oriented bank as opposed to the other? A. More so?

Q. More so. A. Yes, I think—again, this is just my understanding—I would say that the Citizens and Southern is certainly more retail oriented even though it does have a sign out there at the airport—what is it—seventy or some eighty of the largest firms do business with us—

Mr. Frisbie: I have no further questions.

The Court: You may step down.

Mr. Doyle: Mack Robinson.

